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# Bogus Butter: An Analysis of the 1886 Congressional Debates on Oleomargarine Legislation

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BOGUS BUTTER: AN ANALYSIS OF THE 1886 CONGRESSIONAL  
DEBATES ON OLEOMARGARINE LEGISLATION

A Thesis Presented

by

Chris Burns

to

The Faculty of the Graduate College

of

The University of Vermont

In Partial Fulfillment of the Requirements  
for the Degree of Master of Arts  
Specializing in History

May 2009

Accepted by the Faculty of the Graduate College, The University of Vermont, in partial fulfillment of the requirements for the degree of Master of Arts, specializing in History.

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## ABSTRACT

Oleomargarine was invented in 1869 in France as an inexpensive alternative to butter. Those with a financial interest in the production of butter immediately saw oleomargarine as a threat. In the United States, initial political action took the form of state laws, acts that ranged from outright prohibition to some form of restriction. State acts prior to 1886 were found to be insufficient and so a remedy was sought at the federal level. This thesis will look closely at the 1886 debates in the House and Senate, as reported in the *Congressional Record*, which led to the passage of the 1886 Oleomargarine Act.

The debates in Congress that took place in 1886 can be better understood as debates within a sequence of debates. In particular, the debates show the issue in the context of the following transcendent historic political themes: food and drug regulation; the internal revenue system; the size and role of the federal government; interstate commerce; protectionism; and regional and party differences on these issues. The procedural path the bill followed is also an important contextual component, grounding this analysis in the political reality of 1886. The language used in the debates illustrates an argument over contested meanings, with appeals to the agrarian heart of the country, and cries against the corrupt practices of the oleomargarine industry and profiteering speculators. These debates demonstrate how socially constructed definitions not only have real political consequences, but that the political process plays an important role in shaping those definitions.

The 1886 Oleomargarine Act is one event in an almost 100 year history of state and federal legislation to regulate oleomargarine and protect butter in the United States. The 1886 Act, which originally included a prohibitive rate of taxation for all oleomargarine, was significantly watered down in Congress. The result was not destruction but consolidation of the oleomargarine industry. The use of taxation to address the problem, however, was altered and not abandoned in subsequent legislative revisions. Oleomargarine was seen as taxable because of its low cultural status. The other products that were taxed at the time were alcohol and tobacco, soon to be joined by playing cards in 1895. These were moral taxes designed to regulate what people consume. The result of the 1886 Act was, in effect, the sanctioning of the stigmatization of oleomargarine by the United States Government.

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## **ACKNOWLEDGEMENTS**

I would like to acknowledge my defense committee for working with me on this thesis. Catherine Donnelly, as chair, helped me to think about the work in a larger agricultural and political context. Nicole Phelps' careful reading of the thesis helped me make a stronger argument. Most of all, I would like to thank my advisor Melanie Gustafson, without whom this thesis would not exist. Melanie provided invaluable insight about the thesis itself, reading several very rough drafts. I will be forever grateful for her constant faith in my ability to eventually complete the work.

I would especially like to acknowledge the support of my wife, Selene, and my children, Clio and Ione. I worked on this thesis on many evenings and weekend afternoons, and I am very grateful to my family for giving me this time and recognizing that it was a worthy endeavor.

## INTRODUCTION

Margarine was invented in 1869 in France as an inexpensive alternative to butter. The product was subsequently introduced to the United States and countries around the world in the 1870's. It was originally known as oleomargarine, although it was often marketed under other names, such as butterine, in the United States. Those with a financial interest in the production of butter immediately saw oleomargarine as a threat. There was a great fear that oleomargarine would severely impact butter sales, especially as it was designed to look and taste exactly like butter. If it could be produced at a lower cost and then sold as butter by unscrupulous manufacturers and dealers, then butter faced not only fair competition but genuinely unfair competition. Dairy organizations around the country made a concerted effort to stop the oleomargarine industry in its infancy. The primary means they adopted for addressing the problem were legislative, adding an explicitly political dimension to the issue.

In the United States, initial political action took the form of state laws, acts that ranged from outright prohibition to some form of restriction. At least twenty-two states passed oleomargarine laws by the mid-1880's, but enforcement was difficult and the oleomargarine industry continued to grow rapidly, leading the dairy interests to press for a federal remedy. This thesis will look closely at the 1886 debates in the House and Senate, as reported in the *Congressional Record*, which led to the passage of a bill imposing a tax upon and regulating the manufacture, sale, importation, and exportation of oleomargarine. The full story of oleomargarine and butter cannot be told through

these debates, nor can even the full story of how this bill passed and why. What these debates do show is how an agricultural issue was transformed when it entered the political process. The way Congress worked and the other important political debates of the late nineteenth-century set up parameters and restrictions that shaped both the debates and the final form of the bill.

The Congressional debates concerning the oleomargarine bill clearly demonstrate how several key political issues of Gilded Age American politics influenced not only the course of the legislation but its very existence. The motives of those who favored the bill were explicitly tied to wider concerns about the fraudulent sale and safety of adulterated food products and concerns over the future of dairy farming. The rhetorical style and language used by the members of Congress illustrates both the political and national culture the debate occurred in, with appeals to the agrarian heart of the country, and cries against the corrupt practices of the oleomargarine industry and profiteering speculators. The argument over the bill's proposed method of solving the problem was also an argument over states' rights, the internal revenue system, the size and effectiveness of the federal government, and the stances of the Republican and Democratic parties on these questions.

The procedural path the bill followed is also an important contextual component, grounding this analysis in the political reality of 1886. Bills in Congress, then and now, are debated, ignored, shaped, passed, and rejected based not only on the members' views of these bills, but also on the formal and informal rules and



procedures of Congress. This point is important in the history of oleomargarine legislation, where plausible alternative paths for legislation were abundant. Bills were introduced both before and after this bill was passed, and very few of them were debated on the floor, and even fewer became law. The most important decision made in terms of the success of many oleomargarine bills was which committee the bill would be referred to. That decision was heavily influenced by the majority party and its leadership.

In the 49<sup>th</sup> Congress, the Democratic Party held the majority in the House while the Republicans held the majority in the Senate. In the House there were 182 Democratic members, 141 Republican, 1 National Greenback, and 1 Independent Democratic. In the Senate there were 39 Republicans, 35 Democrats, and 2 Readjusters from Virginia. Grover Cleveland, a Democrat, had been elected President in 1884, defeating James Blaine in a very close vote. Government was divided and neither political party had a clear mandate to advance its agenda. Congress, at this point in time, had considerable power in crafting policy. Woodrow Wilson, in his 1885 study *Congressional Government*, asserted that “unquestionably, the predominant and controlling force, the centre and source of all motive and of all regulative power, is Congress.”<sup>1</sup> President Cleveland did try to assert some executive power, by making more frequent use of his veto power than his predecessors, often on matters that were more partisan in nature than this bill was, but this was power exerted in reaction to Congress and not proactive policy setting.<sup>2</sup>

One of the reasons Cleveland had a hard time deciding what to do about the oleomargarine bill is that it did not break along party lines. While Republicans almost unanimously supported the bill, the Democrats were split, with southerners nearly unanimous in opposition and northern and western Democrats more evenly split. In the Senate, the bill did not get or require much support from the Democrats, but their votes in the House were crucial. President Cleveland, from the dairy state of New York, chose not to veto the bill, siding with the members of his party who had reservations about the measure and would not have supported it in its initial form, but who found the amended version acceptable. The political context in which this bill was debated helps to develop not only a fuller picture of the story of oleomargarine legislation, but also of the political process itself.

In addition, these debates demonstrate how socially constructed definitions of commodities not only have real political consequences, but that the political process plays an important role in shaping those definitions. The process of giving oleomargarine a lower, oppositional cultural meaning in relation to butter allowed it to be one of the very few products at that time subject to taxation, joining alcohol and tobacco. The public debates on the unwholesomeness of oleomargarine and its relative merit in comparison to butter, as well as the enactment of the taxation legislation, gave additional weight to the rapidly evolving interconnected definitions of oleomargarine as corrupt or evil and butter as pure or good. While the intensity of the arguments over

these meanings has subsided significantly over the course of time, there are still strong echoes of these assigned cultural values of butter and margarine.

There have been a number of articles and monographs written on the subject of oleomargarine legislation and the 1886 Act in particular. Some works have looked at the Act and the debates in great detail, but there has not been enough work integrating the development of the Oleomargarine Act into the political discourses and events of its time.<sup>3</sup> Henry Bannard, in an 1887 article “The Oleomargarine Law: A Study of Congressional Politics,”<sup>4</sup> rails against the recently passed legislation. Bannard argues that the federal government had overstepped its powers on this issue, quoting the familiar refrain from the debate that the bill was “protection gone mad.” His article describes the debate in some detail, particularly motives and arguments, but as a nearly contemporaneous piece, it lacks a wider historical political context. His account does have the advantage of a more first-hand perspective, but his passionate opinions make the article read more like a speech on the floor of Congress against the measure than an attempt at objective scholarly discourse.

Margarine was so heavily legislated around the world that every work on the history of margarine by necessity covers the legislative restrictions placed on the industry. S.F. Riepma’s 1970 work, *The Story of Margarine*, has a chapter on margarine law. Riepma, President of the National Association of Margarine Manufacturers, provides a nice summary of margarine legislation in the United States but does not deal with the 1886 debate in great detail. Riepma does make two points that are central to

this thesis, that the act “constituted a compromise that satisfied nobody,” and that “the Act of 1886 reflected its times.”<sup>5</sup> *Margarine: An Economic, Social and Scientific History 1869-1969*, edited by J.H. van Stuijvenberg, devotes a chapter to government legislation around the world. The chapter is useful for setting the United States legislation in the context of the many international acts that governed the sale and consumption of oleomargarine.<sup>6</sup> The chapter ignores Canada however, where margarine was banned outright. W.H. Heick’s *A Propensity to Protect: Butter, Margarine and the Rise of Urban Culture in Canada* studies the issue in Canada in great detail. The timeline in Canada was similar to that in the United States. The Canadian legislation serves as an alternative model for how things could have developed in the United States. As in the United States, however, Canada’s legislation only slowed the growth and proliferation of the margarine industry, and ultimately most restrictions on margarine were lifted.

Katharine Snodgrass’ *Margarine as a Butter Substitute* details the history of margarine, its chemistry, economic issues, and related legislation. The book is a thorough analysis of the issues up to 1930 and attempts to remain objective on the central issue of margarine’s relation to butter. As Snodgrass writes in her conclusion, “with use of special pleading, partisan groups might readily take the forgoing study and make a case for the dairy industry or for the margarine industry, according as their interests lay with the one or the other.” She extensively covers the legislative history of margarine, devoting nine chapters and over one-hundred pages to the subject.

Where Bannard focuses only on the motives of those in favor of the legislation, Snodgrass, in her attempt to be fair and objective, adds a breakdown of the three main motivations of those opposed to the bill: “those who represented the margarine interests directly, or indirectly through the raw materials used—primarily, oleo oil and cottonseed oil; those who considered federal legislation unconstitutional; and those favored federal action but opposed taxation.” This thesis attempts to expand the discussion of these motivations by focusing more extensively on the related political debates of that time period.<sup>7</sup>

Three recent works have studied the 1886 Act with new approaches. Geoffrey Miller’s “Public Choice at the Dawn of the Special Interest State: The Story of Butter and Margarine,” focuses on the lobbying aspect of the 1886 legislation, arguing that the dairy interests had a wider base of support and were better organized than the oleomargarine interests, and that this played a key role in the success of the legislation. His main point is that “the margarine tax statute of 1886 marks the birth of the modern special interest state.”<sup>8</sup> Ruth Dupré’s “If It’s Yellow, It Must Be Butter: Margarine Regulation in North America since 1886,” studies the issue from an economic point of view. Dupré explores the competing economic interests of the dairy sector with those of consumers, manufacturers, and other agricultural sectors. Her work shows a strong correlation between a state’s production of butter, cotton, and livestock and the stance of its legislators on oleomargarine legislation.<sup>9</sup> The issue of oleomargarine legislation is studied as a social problem in Richard A. Ball and J. Robert Lilly’s “The Menace of

Margarine: The Rise and Fall of a Social Problem.” Ball and Lilly make an important contribution to the literature by focusing on the “social and cultural connotations” of both margarine and butter.<sup>10</sup>

All of the issues raised by these three articles have made the oleomargarine legislation literature much richer. While these and other studies have provided some context for the 1886 debates, additional work is needed on the explicitly political context. In particular, the debates show the issue in the context of the following transcendent historic political themes: adulterated food and food and drug regulation; the internal revenue system; the size and role of the federal government; interstate commerce; protectionism; the Democratic and Republican parties; and sectional or regional politics. A close study of the debates also supports and extends some of the points made in the literature already. For example, the language used by Representatives and Senators when they described butter and oleomargarine fits nicely with Ball and Lilly’s analysis of the symbolic values assigned to the products. What the debates also show quite clearly is a symbolic language used to describe farmers, businessmen, and laborers.

In addition to works that have dealt directly with the Oleomargarine Act of 1886, there are a number of works that have informed the theoretical model of the argument made in this thesis. These works come not only from historians, but from political scientists, anthropologists, and rhetorical historians. An important argument about political development has been made by the political scientist Paul Pierson, in *Politics in*

*Time.* Pierson argues that “events are parts of various sequences of events. Their place in those sequences may play a critical role in determining their meaning.” The debates in Congress that took place in 1886 and eventually led to the passage of the Oleomargarine Act of 1886 can be better understood by viewing them in this way, as events within a sequence of events, or as debates within a sequence of debates. What is gained from this approach is a better understanding of the bill itself, a better understanding of overlapping issues and discourses, and a stronger acknowledgement that this or any piece of legislation is partially determined by a temporal component. Pierson has argued that social scientists studying political institutions should be paying more attention to context and development over time.<sup>11</sup>

In a sense, this is what historians have always been concerned with, and it’s an approach that shares much in common with ideas developed in other disciplines, such as Clifford Geertz’ ideas about thick description in the field of anthropology.<sup>12</sup> What is central to Pierson’s work, and directly applicable to the 1886 oleomargarine debate, is the concept of path-dependence. The argument for stressing context, and in this case emphasizing political context, is that this bill would not have become what it was if considered at a different point in time. There are a number of temporal factors that contributed to the argument occurring the way it did. Some of these factors, such as the symbolic value attached to farmers in this country, changed very slowly over time. Other factors, such as the acceptance and use of the internal revenue system or agreement on the need for food and drug regulation, were developing more quickly.

In particular, the argument over food and drug regulation was new enough that when this act was debated it was uncertain whether protection of the dairy industry through heavy taxation or a simple regulatory measure was the appropriate course, or, as some proposed, the right course was no action at all. Because of this uncertainty of purpose, the act ended up being a compromise which satisfied no one. The act that came out of these debates and proceedings and its impact became an important component of future debates on oleomargarine and food regulation legislation.

Another important source of theory for this thesis is the work of several scholars in the field of rhetorical history. In a chapter in *Doing Rhetorical History*, David Zarefsky outlines four senses of rhetorical history: the history of rhetoric; the rhetoric of history; the historical study of rhetorical events; and the study of historical events from a rhetorical perspective. This thesis falls within this fourth sense, it is a study of the political rhetoric used in the debate of this legislative act in order to better understand the history of oleomargarine legislation and political history in general. As Zarefsky notes, “by studying important historical events from a rhetorical perspective, one can see significant aspects about those events that other perspectives miss.”<sup>13</sup> By close reading of the Congressional debates on the 1886 Oleomargarine Act, we can see a number of significant aspects that might be missed otherwise. We can see the other issues that are brought into the debate, such as adulterated food, internal revenue, and states’ rights. We can see how this discourse not only plays a role in these other discourses, but how these discourses play a part in this debate. By understanding the



fuller context of the debate, we gain a fuller understanding of why the legislation turned out the way it did.

Congressional debates as recorded in the *Congressional Record* are one source, albeit an important and in this case a rather lengthy one. As a source, their weaknesses have been pointed out by a number of scholars, but their value depends on the question that is being asked.<sup>14</sup> As a record of the general arguments about a particular piece of legislation, they can be considered authentic, accurate, and reliable. The main interest here is not to find a smoking gun that firmly establishes a direct causal link between the debates and how the piece of legislation was passed, nor is the concern with whether the remarks accurately reflect what was said on the floor and the give and take between Congressmen. All of those issues are important and have their place, but this thesis is concerned with capturing the general arguments, tone, and flow of the debates, and for that purpose the *Congressional Record* is the best source.

Three recent works show the richness of congressional debates as recorded in the *Congressional Record* and before that the *Congressional Globe*. Theodore Sheckels, in *When Congress Debates: A Bakhtinian Paradigm*, employs the work of Mikhail Bakhtin as a framework for analyzing congressional debates in order to address what Sheckels feels are some of the past failures of scholarship in this area. Sheckels urges an approach that would take into account all of the voices in the debate and avoid the tendency to reduce debates to simply pros and cons. Sheckels also stresses that debates are not finalizable. These two concepts—an emphasis on the many voices of

the debate and the idea that these debates are part of larger ongoing discussions—are adapted here. Sheckels’ emphasis on paying attention to the multitude of voices is an important approach for analyzing congressional debates. What Sheckels means is not only to pay attention to the full spectrum of positions being voiced about a bill, but pay attention to the voices that are brought into the debate as well. In these debates, those voices belong to scientists, literary authors such as Shakespeare, the Bible, judicial decisions, fellow Congressmen, and both imagined and real voices of farmers and consumers. The oleomargarine debates are not the final word on any of the topics they consider. The debates are part of an ongoing discourse that results in a specific piece of legislation that has very real consequences, but it is the emphasis on how they fit into their own point in time that is the central concern of this thesis.<sup>15</sup>

Kirt Wilson, in *The Reconstruction Desegregation Debate*, analyzes the rhetoric used in the congressional debates leading up to the 1875 Civil Rights Act. Wilson foregrounds the role of political rhetoric in the creation of the Act, arguing that “the rhetorical critic sees legislation, the end result of political judgments, as a discursive creation.” Wilson examines closely the overlapping and competing politics of equality and rhetoric of place in these debates, and their relative importance over time, and his approach is an excellent model for placing the debate over a single piece of legislation in the context of wider political discourses.<sup>16</sup>

An equally important model for this type of work is William James Hull Hoffer’s *To Enlarge the Machinery of Government: Congressional Debates and the Growth of the*

*American State, 1858-1891*. Hoffer's book, as the title suggests, looks at a number of debates to trace the development of political discourse about the proper role of the federal government. He explores debates on different pieces of legislation as opposed to a single piece of legislation or multiple pieces of legislation on a single topic. Both Hoffer's and Wilson's works serve as methodological models for this thesis, but they also serve as secondary source material on important political discourses during the same time period. In this respect, Hoffer's work is more relevant as the oleomargarine debates also directly address the issue of the role of the federal government, and in particular the role of interstate commerce, which Hoffer covers through the debates about the Interstate Commerce Commission.<sup>17</sup> In his conclusion, Hoffer makes the important point, one that is also applicable to the issues studied here, that "the thought process behind an expanded national government in the United States, from 1858 to 1891, did not constitute a series of radical departures but, rather, revealed a halting, gradual, and almost self-effacing series of overlapping dramas."<sup>18</sup>

Chapter One of this thesis sets the stage for the 1886 debates in Congress. The chapter summarizes the invention of oleomargarine in France, its introduction into the United States, restrictive and prohibitory legislation passed by the states, important court decisions on those acts, and agitation for action at the federal level.

Chapter Two explores one of the most important procedural questions for the bill—which committee it would be referred to. Because it was being proposed as a revenue measure, many voices in both chambers felt the bill should be considered by

the appropriate committee for revenue measures, Ways and Means in the House and Finance in the Senate. Instead, the bill was sent to the Agriculture Committee in the House and Agriculture and Forestry in Senate. This decision made enactment of the bill possible and would continue to play a role in future attempts to repeal or amend the bill.

Chapter Three investigates the motives for the legislation, which were directly connected to wider adulterated food issues. The chapter will look at the importance of language in defining butter, oleomargarine, and farmers, and will examine the arguments about fraudulent practices and the healthfulness of oleomargarine.

Chapter Four follows by exploring the debate over the means of addressing the alleged problem. Building on state legislation and contemporary interpretations about the role of the federal government, the proposed legislation was more of a revenue bill than a regulatory act. This chapter investigates the central importance of this distinction in the debate and how the debate necessarily included related issues surrounding the internal revenue system, tariffs, laborers, manufacturers and other business interests, states' rights, and interstate commerce.

Chapter Five discusses how the bill proceeded through the House and Senate and was then signed into law by President Cleveland. The chapter looks at how the procedures of the House impacted the bill, how more moderate views in both the House and Senate ultimately shaped the bill, and how the Senate debate repeated and added to the much lengthier debate in the House. Chapter Five also includes an analysis of

President Cleveland's message to Congress that accompanied his signing of the bill.

Cleveland, a Democrat elected in 1884 on a platform that, in part, pledged to reform the internal revenue system, wrote a carefully worded message that shows what a difficult issue this was for Democrats.

Chapter Six traces the political discourse of the oleomargarine legislation through the subsequent Congressional debates that led to amendments in 1902, 1930, and 1931, and finally to repeal of the legislation in 1950. The chapter also analyzes the impact of the legislation on other political discourses as well as on the oleomargarine and butter industries. Finally, this chapter makes the point that studying these Congressional debates is vitally important in understanding the history of this odd but important piece of legislation, and studying this legislation is important in understanding the history of margarine, butter, and food culture in America.

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<sup>1</sup>Woodrow Wilson, *Congressional Government; a Study in American Politics* (Boston: Houghton Mifflin Company, 1913), 11.

<sup>2</sup>Morton Keller, *Affairs of State: Public Life in Late Nineteenth Century America*. (Cambridge: Belknap Press of Harvard University Press, 1977), 298-299.

<sup>3</sup> In this thesis, the term discourse is used as outlined by Bertram Scheufele, with an emphasis on the idea that "discourses are processes of collectively constructing social reality." *The International Encyclopedia of Communication* (Malden, MA: Blackwell Pub, 2008), 1351-1352.

<sup>4</sup> Henry C. Bannard, "The Oleomargarine Law: A Study of Congressional Politics." *Political Science Quarterly* 2, no. 4 (December 1887): 545-557.

<sup>5</sup> Siert F. Riepma, *The Story of Margarine* (Washington, DC: Public Affairs Press, 1970): 114.

<sup>6</sup> Johannes Hermanus van Stuijvenberg, *Margarine: An Economic, Social and Scientific History, 1869-1969* (Toronto: University of Toronto Press, 1969). Daniel Rodgers' work

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on the international exchange of ideas could serve as a model for studying this aspect of oleomargarine legislation. Daniel T Rodgers, *Atlantic Crossings: Social Politics in a Progressive Age* (Cambridge, Mass: Belknap Press of Harvard University Press, 1998).

<sup>7</sup> Katharine Snodgrass, *Margarine as a Butter Substitute* (Stanford University, CA: Food Research Institute, 1930).

<sup>8</sup> Geoffrey P. Miller, "Public choice at the dawn of the special interest state: the story of butter and margarine." *California Law Review* 77, no. 1 (1989): 83-131.

<sup>9</sup> Ruth Dupré, "'If It's Yellow, It Must be Butter': Margarine Regulation in North America Since 1886." *The Journal of Economic History* 59, no. 2 (June 1999): 353-371.

<sup>10</sup> Richard A. Ball and J. Robert Lilly, "The Menace of Margarine: The Rise and Fall of a Social Problem." *Social Problems* 29, no. 5 (June 1982): 488-498.

<sup>11</sup> Paul Pierson, *Politics in Time: History, Institutions, and Social Analysis* (Princeton, N.J: Princeton University Press, 2004).

<sup>12</sup> Clifford Geertz, *The Interpretation of Cultures; Selected Essays* (New York: Basic Books, 1973).

<sup>13</sup> David Zarefsky, *Doing Rhetorical History: Concepts and Cases* (Tuscaloosa: University of Alabama Press, 1998), 26-30.

<sup>14</sup> For more on the literature that discusses the flaws of Congressional debates as evidence, see the "Essay on Sources" in Williamjames Hull Hoffer, *To Enlarge the Machinery of Government: Congressional Debates and the Growth of the American State, 1858-1891* (Baltimore: Johns Hopkins University Press, 2007), 241.

<sup>15</sup> Theodore F. Sheckels, *When Congress Debates: A Bakhtinian Paradigm* (Westport, Conn: Praeger, 2000).

<sup>16</sup> Kirt H. Wilson, *The Reconstruction Desegregation Debate: The Politics of Equality and the Rhetoric of Place, 1870-1875* (East Lansing: Michigan State University Press, 2002), xvi.

<sup>17</sup> Williamjames Hull Hoffer, *To Enlarge the Machinery of Government: Congressional Debates and the Growth of the American State, 1858-1891* (Baltimore: Johns Hopkins University Press, 2007).

<sup>18</sup> Hoffer, 197. In addition to Hoffer, a number of works address the forces that led to the expansion of government and bureaucracy in the United States in this period, in what Wiebe calls a "a search for order": Morton Keller, *Affairs of State: Public Life in Late Nineteenth Century America* (Cambridge: Belknap Press of Harvard University Press, 1977); William Edward Nelson, *The Roots of American Bureaucracy, 1830-1900* (Cambridge, Mass: Harvard University Press, 1982); Robert H Wiebe, *The Search for Order, 1877-1920*, 1st ed. (New York: Hill and Wang, 1967).

## CHAPTER 1: OLEOMARGARINE, 1869-1886

Oleomargarine was invented in 1869 by a French chemist, Hippolyte Megé-Mouriez. In response to the low supply and rising cost of butter in France, Napoleon III had offered a prize for a butter substitute. In particular, Napoleon III was interested in finding a product that could be used for the poor and for the Navy, and that kept longer than butter. The interest of Napoleon III and France was driven in part by increased tensions with Prussia and fear of military conflict, a fear that would be realized in 1870 and that would result in the end of Napoleon III's reign.<sup>1</sup> Interest in butter substitutes was also driven by the increased use of machinery requiring lubrication, which "increased the demand for all types of fats and oils suitable for lubrication purposes, and thus indirectly affected the cost of living."<sup>2</sup>

Megé's product was called oleomargarine, a name derived from the mistaken scientific knowledge of fats from that period. As the Oxford English Dictionary states:

The French name *oléomargarine* was given by Berthelot (1854) to a solid substance obtained from olive oil in 1838 by Pelouze and Boudet (*Comptes Rendus de l'Acad. des Sci.* 7 665), which was regarded by them as a combination of the *oléine* and *margarine* of Chevreul. According to the view then held, *oléine*, *margarine*, and *stéarine* were regarded as the essential constituents of animal fat. Since butter, or the fat of milk, consisted according to Chevreul mainly of *oléine* and *margarine*, with a small amount of butyrin and related compounds, H. Mège-Mouriés in 1869-71 experimented with its artificial production by extracting the *oléine* and *margarine* from animal fat, with the subsequent addition of butyrin, etc. Hence the name *oléomargarine* for the supposed combination of *oléine* and *margarine* thus obtained. As subsequent research showed that neither the *margarine* of Chevreul, nor the *oléomargarine* of Berthelot, were definite chemical compounds, these names are no longer in chemical use.<sup>3</sup>

The challenge for Megé was to create a less expensive fat in solid form. The ingredients used needed to be relatively inexpensive. Since fat from beef cattle was otherwise a

waste product, it was seen by manufacturers as added revenue and a way to maximize the investment that had already been made in cattle.

The nature of butter posed several challenges to potential imitation products. Snodgrass details these “peculiar properties” as: a low melting point; a gradual softening before melting; a high plasticity, which means it can be easily spread and feels smooth rather than granular on the tongue; a yellow and translucent appearance; a specific flavor; and a behavior, odor, and taste when heated.<sup>4</sup> Another characteristic of butter that became critical to the political debate is that its color changes depending on the breed of the cows and what the cows are eating. Butter was frequently dyed in order to look more like spring and early summer butter, when it is its most yellow. Wells, Richardson, and Co., a Burlington, Vermont firm that specialized in textile dyes, manufactured an annatto based dye for coloring butter that was also used by oleomargarine manufacturers.<sup>5</sup>

Megé attempted to imitate butter by deriving the product from the fat of a slaughtered cow. His method was based on a hypothesis of what part of the cow butter came from. Wiest describes the essential steps of Megé’s process:

The process he ultimately adopted consisted of heating finely-minced beef with water, carbonate of potash, and fresh sheep’s stomachs. The mixture was raised to a temperature of 113 degrees F. The pepsin contained in the sheep’s stomach and the heat separated the fat from the cellular tissue. By subjecting the fatty matter to hydraulic pressure the softer oils were separated from the stearin. This oil, now generally called oleo oil, was mixed in the proportion of 10 lbs. of the oil with 4 pints of milk, 3 pints of water, and a small quantity of annatto to color it. The whole was then churned and produced a product very much like butter.<sup>6</sup>

The description of the process is important in a number of respects. The main ingredient in the product was beef fat from slaughterhouses. Questions were



frequently raised about the health of the animals being slaughtered and sold, particularly for export, but “meatpackers objected to federal intrusion into their operations.”<sup>7</sup> The reputation of slaughterhouses and the meatpacking industry, and some of the arguments about the “wholesomeness” of their products, were an important component of the 1886 debates. Without inspection regulations in place, it was easier to call into question the safety of the meat by-products used in the manufacture of oleomargarine, and more difficult to document and prove that they were indeed safe. Ultimately, government inspection would serve as a stamp of approval, but at this point in time there was still great resistance to government regulation and inspection.

Since beef fat was initially the primary ingredient of oleomargarine, those individuals and organizations with a financial interest in livestock, slaughterhouses, and meatpacking were opposed to any legislation to restrict or prohibit the product. However, the meat industry was going through a period of great transition brought on by innovations in refrigeration technology, and critical battles were occurring in 1886 between sectors of this industry. Due to these advances in refrigeration, meatpackers were now butchering cattle themselves, in a few geographically important locations such as Chicago and Kansas City, and then shipping the refrigerated meat around the country. This system was replacing the earlier method of shipping the cattle themselves around the country, and the economic disruption resulting from the transition to this new system led to disagreements between the meatpacking industry and cattle growers

over railroad rates for dressed meat as opposed to whole cattle. Armour & Company of Chicago was a rapidly growing meatpacking company that was one of the first to successfully use the concept of vertical integration in their business. Vertical integration led them to acquire and consolidate slaughterhouses, and led them to seek outlets for the by-products of slaughtering such as the production of oleomargarine. Armour & Company would be the most prominent face of the oleomargarine industry during the 1886 congressional debates.<sup>8</sup>

The growing workforce of these larger meatpacking corporations, and the need for greater numbers of skilled labor, especially for butchers, contributed to tensions surrounding conditions of employment. Employees increasingly began to organize, many with the Knights of Labor, and join with laborers from other industries to agitate for reforms such as the eight-hour workday. In fact, the debate over the oleomargarine bill in the House took place shortly after the events of May 1886 that called for implementing an eight-hour workday, and culminated with the Haymarket Affair catastrophe on May 4 and a series of labor strikes. At the major meatpacking operations in Chicago, there were small walkouts led by butchers on Monday May 3, but by noon of that day the meatpacking corporations had given in to the demands for an eight-hour day at full pay, and business went back to normal.<sup>9</sup>

A more united front from the livestock, labor, and meatpacking industry would have had greater success in opposing the oleomargarine bill, but their focus on other more important conflicts most certainly distracted them from giving the legislation their

full attention. In particular, the major focus of labor interests around the country that year was on the May 1<sup>st</sup> deadline they had set for obtaining an eight hour workday. This was an issue that drew enormous public attention, even more so after the Haymarket Affair. It is possible to conceive of strong labor opposition to the oleomargarine bill as it adversely impacted the cost of an important food commodity, but it was not going to be a major issue for labor organizations while the eight-hour workday campaign and its aftermath was in full swing.

The ingredients of oleomargarine would eventually change significantly over time, and this would have a major impact on the political fate of oleomargarine legislation. From 1916-1935, coconut oil replaced animal fat as the primary ingredient, but coconut oil was not a domestic product in significant amounts so there was even less support from agricultural interest groups for the margarine industry. In fact the product now gained the additional stigma of being “foreign”. When the industry switched to cottonseed and soybean oil in the 1930’s, the support gained from these agricultural sectors contributed significantly to the ultimate repeal of the legislation in 1950.<sup>10</sup>

In 1874, the Megé process was patented in the United States, and the United States Dairy Company of New York City obtained the rights to manufacture the product.<sup>11</sup> Henry Mott, the company’s chemist who would become a leading figure in defending oleomargarine, made some improvements to the Megé process and the US Dairy Company and its subsidiary, the Commercial Manufacturing Company, began to

heavily produce and distribute the product.<sup>12</sup> It was not long before alternative processes were patented and other manufacturers began producing oleomargarine as well. By 1887, 31 million pounds per year of oleomargarine were produced in the United States.

The invention of oleomargarine caused great concern among dairy interests. These interests included farmers of course, but also individuals and corporations with significant investments in the production and sale of butter. A cheaper product made to look and taste like butter and sold by a company with Dairy in its name naturally raised some eyebrows. One of the greatest concerns was that the consumer would be deceived into thinking they were getting butter when in fact they were not. A story from the December 7, 1877 *New York Times* illustrates these concerns. The article relates the following incident as reported by the Butter and Cheese Exchange, which was agitating for legislative remedies:

Christopher Strauss, grocer, of No. 16 Second-avenue, was arraigned before Justice Murray in the Fifty-seventh Street Police Court yesterday charged with selling oleomargarine, representing it to be pure butter. S.A. Churchill, a former manufacturer of the artificial article, and who is now employed as a detective by the Butter and Cheese Exchange, appeared as complainant. His testimony was to the effect that he went into Strauss' store and purchased a half pound of butter, which on being tested proved to be very bad oleomargarine. Strauss said he did not know that the butter was bad; that it had been left in his store, he knew not by whom for him to dispose of on speculation. Justice Murray remarked that it was very curious that he did not know who had given him the butter to sell, but Strauss was positive he did not know the man, nor did he ever see him before. He was held to answer in the sum of \$300 bail. Several warrants in other cases have been issued by Justice Murray, which are returnable to-morrow.<sup>13</sup>

The dairy interests mobilized soon after the introduction of oleomargarine into the marketplace and took action to defend their product against competition, seeking to discover and publicize incidents of fraud in order to publicly discredit the oleomargarine industry. The Butter and Cheese Exchange played an early role, here hiring a detective to seek out incidents of fraud. They would soon be joined by other organizations such as state and national dairymen's associations, as well as new groups such as the National Association for the Prevention of the Adulteration of Butter. In order to win the argument that their livelihood was being unfairly threatened, dairy interests organized and mounted what they considered to be a counter-attack. Geoffrey Miller finds that "the industry succeeded in forging an effective lobby by drawing on a well-developed set of preexisting institutions," and he attributes the ultimate success of the 1886 bill directly to the well-organized efforts of the dairy lobby.<sup>14</sup>

Another point illustrated by the *Times* report is that the confiscated product was scientifically tested. Science is central to the intertwined history of margarine and butter. Science was used, obviously, in the invention of the product as well as its refinement. Science was used to argue both for and against oleomargarine, both in relation to allegations of fraud but also increasingly in relation to the healthfulness of the product. A June 27, 1878 *New York Times* piece is illustrative of the early scientific debate over oleomargarine. The piece is written by Dr. Mott and is in response to some microscopic studies by a John Michell, which called into

question the nutritive value of oleomargarine. Mott responded fiercely, attacking Michell's qualifications, results, and conclusions.<sup>15</sup> An 1881 pamphlet produced by Mott, *A Brief History of the Megé Discovery*, continues and expands this attack on Michell and fellow detractors.<sup>16</sup> On the butter side, a publication titled *Oleomargarine and Butterine: A plain presentation of the most gigantic swindle of modern times*, presents several pages of anecdotal and scientific evidence relating to the "unwholesomeness of margarine."<sup>17</sup> These public debates over the relative health merits of the two products have continued long after most of the legislative debates in the United States ended. In more contemporary times, margarine and butter interests have used the latest scientific evidence on cholesterol and trans-fats to argue the superiority of their product.

Contrasting symbolic values were almost immediately assigned to butter and oleomargarine. For the most part, butter would come to represent the natural, pure, agrarian heritage of the country while margarine would represent a scientific, industrialized, modern world. This aspect will be looked at in greater detail later in this thesis as the symbolic values attached to the two products become absolutely critical to the fates of legislative efforts, and it is also a central element of Ball and Lilly's analysis of the issue.<sup>18</sup> An early example of these characterizations that would be used in arguments both for and against the regulation of oleomargarine is that it was a product for the lower classes. In an April 27, 1874 *New York Times* article about oleomargarine, the author writes: "we advise housekeepers not to give up

good butter for the new compound just yet. There can be no objection to have boarding-house keepers and all others economically inclined buy it for their own immediate use, but it will never do to have it set in the way of the unsuspecting person who pays for and expects to receive the genuine article.”<sup>19</sup>

Dairy interests initially lobbied for legislative action at the state level. Depending on the source, between 22 and 27 states passed some legislation restricting or prohibiting the sale and manufacture of oleomargarine or butterine by 1886. The exact number is not crucial, but the general path is important. State laws influenced each other and ultimately influenced the approach taken at the federal level. A number of studies have covered the basic trajectory of the history of these state acts and they are in general agreement as to what happened. State laws initially took the form of restricting the manufacture and sale of oleomargarine so that it had to be clearly marked and labeled and it could not be colored yellow. A prohibitory law was enacted in Missouri in 1881, and later upheld by the Circuit Court of Missouri. New York strengthened its law in 1884, moving it from one of restriction to one of prohibition. However, the New York law was declared unconstitutional in 1885 by the Court of Appeals in the case of *People v. Marx*. Pennsylvania, Maine, Michigan, Minnesota, and Wisconsin all passed prohibitory laws, and Pennsylvania’s law was ultimately upheld by the United States Supreme Court in *Powell v. Pennsylvania* in 1888. In New Hampshire, Vermont, and South Dakota, laws were passed that required oleomargarine to be colored pink, which in effect served as prohibitory laws.<sup>20</sup>

Enforcement of these state laws was nearly impossible and it was a piecemeal solution to what was considered a national threat. At the February 1886 National Dairymen's Convention in New York City, the main order of business was a call for federal legislation to tax and regulate oleomargarine. According to the *New York Times* coverage of the event, estimates of "bogus butter" on the market in the previous year were 60 million pounds, most of it fraudulently sold as butter. Other concerns were raised about the healthfulness of oleomargarine. Given the 1885 decision against the New York law, it was felt that the best strategy would be a federal tax that was so high that it would eliminate any profit motive for producing and selling oleomargarine. According to the article, "no tax of any less than 10 cents a pound would be of any use." Former Internal Revenue Commissioner Green Raum spoke to the convention and suggested that by placing the Commissioner of Internal Revenue in charge of taxing and regulating the product, it would finish the industry in about a year. The convention endorsed resolutions to set up a committee of five to lobby Congress to tax, not less than 10 cents per pound, and regulate the oleomargarine industry, placing responsibility for enforcement with Internal Revenue.<sup>21</sup>

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<sup>1</sup> W.G. Hoffman, "100 Years of the Margarine Industry," in *Margarine: An Economic, Social and Scientific History, 1869-1969*, ed. Johannes Hermanus van Stuijvenberg (Toronto: University of Toronto Press, 1969), 13-14.

<sup>2</sup> Katharine Snodgrass, *Margarine as a Butter Substitute* (Stanford University, CA: Food Research Institute, 1930), 121.

<sup>3</sup> "oleomargarine, *n.*" OED Online. December, 2008. Oxford University Press.

<sup>4</sup> Snodgrass, 123-124.



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<sup>5</sup> Wells, Richardson & Company (Burlington, Vt.), *How to Increase the Value of Butter: Three Million Dollars Can Be Saved ... by Farmers ... Using Wells, Richardson and Co.'s Perfected Butter Color ... for Sale by Druggists and Merchants* (Burlington, Vermont: [s.n., 1877]).

<sup>6</sup> Edward Wiest, *The Butter Industry in the United States; an Economic Study of Butter and Oleomargarine* (New York: AMS Press, 1968), 216.

<sup>7</sup> Jimmy M. Skaggs, *Prime Cut: Livestock Raising and Meatpacking in the United States, 1607-1983*. 1st ed. (College Station: Texas A&M University Press, 1986): 84.

<sup>8</sup> Skaggs, 90-97.

<sup>9</sup> Louise Carroll Wade, *Chicago's Pride: The Stockyards, Packingtown, and Environs in the Nineteenth Century*. (Urbana: University of Illinois Press, 1987), 234-236.

<sup>10</sup> Ruth Dupré, "'If It's Yellow, It Must be Butter': Margarine Regulation in North America Since 1886." *The Journal of Economic History* 59, no. 2 (June 1999): 360-361

<sup>11</sup> "Classified Ad 9 -- No Title." *New York Times* January 27, 1874.

<sup>12</sup> Snodgrass, 147-148.

<sup>13</sup> "The Trade in Oleomargarine." *New York Times* December 7, 1877.

<sup>14</sup> Geoffrey P. Miller, "Public choice at the dawn of the special interest state: the story of butter and margarine." *California Law Review* 77, no. 1 (1989): 131.

<sup>15</sup> "Oleomargarine Butter: Recent Microscopic Tests. Prof. Mott's Reply to John Michell Comparative Purity of Dairy Butter and the New Article of Commerce." *New York Times* June 27, 1878.

<sup>16</sup> Commercial Manufacturing Company Consolidated, *A Brief history of the Megé discovery: oleomargarine butter or butterine: microscopically and chemically analyzed by the most skillful and distinguished scientists, demonstrating its purity: award of the American Institute* (New York: Commercial Manufacturing Co. Consolidated, 1881).

<sup>17</sup> *Oleomargarine and butterine. A plain presentation of the most gigantic swindle of modern times ...* (New York: T.L. McAlpine, 1886).

<sup>18</sup> Richard A. Ball and J. Robert Lilly. "The Menace of Margarine: The Rise and Fall of a Social Problem." *Social Problems* 29, no. 5 (June 1982): 488-498.

<sup>19</sup> "Oleomargarine." *New York Times* April 27, 1874.

<sup>20</sup> Wiest, 241-247; Snodgrass, 28-33, 46-47.

<sup>21</sup> "Tax It Out of the Market: Farmers Discussing the Best Way to Fight Bogus Butter." *New York Times* February 19, 1886,

## CHAPTER 2: THE COMMITTEE QUESTION

Members of Congress quickly responded to the increased lobbying pressure from dairy organizations. At the start of the 1<sup>st</sup> session of the 49th Congress in 1886, fifteen bills concerning oleomargarine were introduced, fourteen in the House and one in the Senate, which were then referred to different committees. In addition, five other bills were proposed, two in the Senate and three in the House, on the more general question of adulteration. When introduced into Congress, the debate became not only about the new problem itself but also about the method for addressing it. In particular, revenue measures were proposed for an agricultural problem, which complicated matters from the start. The decision about what committee this legislation would be referred to proved to be vital to the ultimate success or failure of almost every piece of legislation introduced on this issue over the course of sixty-four years. The committee question mattered because, in Wilson's words, "it is not far from the truth to say that Congress in session is Congress on public exhibition, whilst Congress in its committee-rooms is Congress at work."<sup>1</sup>

The question of committee responsibility attempted to address whether this was a trade issue, a tax issue, or an agricultural issue. To some extent the answer depended on the intent of the individual bills, but the matter was confused by the naturally overlapping jurisdictions of the Committees, and ultimately House leadership and a majority of members could successfully send bills wherever they wanted.<sup>2</sup> As a result of the complexity of this question, the House bills ended up in four different committees.

Three of the House bills, which were predominantly about exports and/or interstate commerce, were referred to the Committee on Commerce, where they languished.

One of the remaining eleven House oleomargarine bills, and three bills on adulteration were submitted to the Committee on the Judiciary to assess their constitutionality. Representative John Tucker of Virginia, a lawyer, chair of the Judiciary Committee and a strong opponent of the legislation, had the text of the Committee's report inserted into the *Congressional Record* on May 25. The Committee found "the evil consequences to the regular producer of butter or any other article by the permission of a product by the spurious competitor, and even the results to health of the people may be conceded. The contention is not to the existence of the disease, but what is the remedy, and by what authority is it to be applied?"

The report stated that there were three types of legislation proposed and the Committee found fault with all three approaches. The Committee reported that it would be unconstitutional to pass legislation that would prevent production outright. The Committee also ruled that it would be unconstitutional to "forbid or restrain the free transportation of any article from one State into another." Finally, the Judiciary Committee found that while Congress did have the power to tax for revenue purposes, to do so with the intent "to strike down a product or an industry is to abuse a constitutional trust." The report accurately predicted that the judicial branch would not find a tax measure unconstitutional, as it would not look at the intent of legislators in passing the measure, but the report did warn its fellow members that what they would

be doing would be unconstitutional in spirit.<sup>3</sup> The bulk of measures introduced in the House, and the bill that ultimately passed, did not seek to prohibit oleomargarine or restrict its transportation from one state to another, but they did seek to tax the product at a level that would threaten the future existence of the oleomargarine industry.

The sharpest divide was over whether the tax/revenue bills in the House, of which there were ten, should go to the Committee on Agriculture or the Committee on Ways and Means. Initially, five were sent to Agriculture and five were sent to Ways and Means. However, three of the bills that were referred to Ways and Means subsequently had that reference changed to Agriculture. The question does not appear to have been settled based on where the measures should properly have been sent. Rather, the leadership and majority of the House members, who were in favor of the bill, sent the bill to the Committee where it was most likely to succeed. In the Senate, the lone bill introduced was sent to the Committee on Agriculture and Forestry, where it languished.

In 1886, the House Committee on Agriculture was the friendlier home for oleomargarine legislation, as evidenced by the roll call vote on the bill that would pass in the House in early June. Agriculture Committee members would ultimately vote 9-2 in favor of the bill, while Ways and Means members voted 10-2 against it. The chair of the Agriculture Committee was Representative William Hatch of Missouri, a Democrat and close friend of Speaker of the House John Carlisle.<sup>4</sup> Hatch served as chair of this committee from 1883-1889, and 1891-1895. Hatch, a lawyer and farmer, had served in

the Confederate Army and as assistant adjutant general and assistant commissioner of exchange of prisoners under the cartel during the Civil War. Although he was characterized during the debate as “a stalwart free-trader, the enemy of sumptuary laws,” he was also a strong supporter of agricultural interests and played a role in many of the “pure food” acts of this period, such as the Bureau of Animal Husbandry Act of 1884 and the Meat Inspection Act of 1890.<sup>5</sup> His strong support of agricultural interests is evidenced by the Hatch Act of 1887, which funded agricultural experiment stations across the country.<sup>6</sup> His interest in agriculture and pure food issues led him to not only be one of the few southern Representatives who supported the bill, but to take on the leading role in guiding its passage through the House.

The Committee on Ways and Means was chaired by William Morrison, an Illinois Democrat, who opposed the bill, and included other vehement opponents of the legislation such as Clifton Breckinridge of Arkansas, William Breckinridge of Kentucky, and William Kelley of Pennsylvania. Morrison served as a prominent voice of tariff reform during this era, and would have seen this measure in the same light, as protectionist and unnecessary for revenue. He would lose his House seat in 1873, as a result of “secret machinations of Pennsylvania manufacturers and the Knights of Labor.” He was subsequently appointed to the Interstate Commerce Commission by President Cleveland, where he served until 1887.<sup>7</sup> Demonstrating the complexity of the interests of the opposition, William Kelley, a founding member of the Republican Party who had been the previous chair of Ways and Means, was the leading proponent of high tariffs.

Kelley, who served in the House from 1861 until his death in 1890, was known as “Pig Iron”, for his staunch support of high tariffs on imported iron. He was a strong opponent of internal taxation and firm supporter of new American industries, and it was on this basis that he opposed this legislation in company with his frequent foe Morrison.

The House Committee on Agriculture held extensive hearings on the eight oleomargarine bills referred there. The committee ultimately reported H.R. 8328, a bill that was written in Committee and introduced as a substitute for H.R. 6570, which had originally been proposed by Representative William Scott of Pennsylvania. H.R. 8328, “a bill defining butter, also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of oleomargarine,” was reported back to the House Committee of the Whole in late April.

The bill, as reported to the floor, contained twenty-one sections. Sections one and two defined butter and oleomargarine respectively, and were critical in determining what products were and were not covered by the bill’s language.

*Be it enacted, &c., That for the purposes of this act the word “butter” shall be understood to mean the food product usually known as butter, and which is made exclusively from milk or cream, or both, with or without common salt, and with or without additional coloring matter.*<sup>8</sup>

Sec. 2. That for the purposes of this act certain manufactured substances, certain extracts, and certain mixtures and compounds, including such mixtures and compounds with butter, shall be known and designated as “oleomargarine,” namely: All substances heretofore known as oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral; all mixtures and compounds of tallow, beef-fat, suet, lard, lard-oil, vegetable-oil, vegetable-oil annatto, and other coloring matter, intestinal fat, and offal fat made in imitation or semblance of butter, or calculated or intended to be used as butter or for butter.<sup>9</sup>

The main features of the bill, as proposed, called for taxes of \$600 per year for manufacturers of oleomargarine, \$480 per year for wholesale dealers, \$48 per year for

retail dealers, and 10 cents per pound to be paid by the manufacturer. The bill also detailed penalties for not complying with the law, outlined packaging requirements for manufacturers and retail dealers, and provided for an analytical chemist and a microscopist to work for Internal Revenue in investigating fraud. Below is a summary of all twenty-one sections of the bill, as shared by Rep. David Henderson, an Iowa Republican, during the debate on May 25.

Section 1 defines what is commonly known as “butter.”

Section 2 defines all substances made in imitation of butter as “oleomargarine.”

Section 3 imposes a special tax upon all dealers in oleomargarine as follows: Manufacturers, \$600; wholesale merchants, \$480; retailers, \$48. It also subjects oleomargarine to certain sections of the Revised Statutes, the object of which is to bring it under the control of the internal-revenue laws.

Section 4. For non-payment of special tax fines are imposed as follows: Manufacturers, from \$1,000 to \$5,000; wholesalers, from \$500 to \$2000; retailers, from \$50 to \$500.

Section 5 requires manufacturers to file bonds, keep books, put up signs, and conduct their business under the surveillance of the officers and agents of the Commissioner of Internal Revenue.

Section 6. Manufacturers must pack oleomargarine in new firkins, tubs, or other wooden packages to contain at least 10 pounds, and to be branded as the Commissioner of Internal Revenue shall prescribe. All sales to be made in original stamped packages. Retail dealers must sell from original packages, and must put what they sell in suitable wooden packages, which shall be marked as the Commissioner of Internal Revenue may direct. A violation of these provisions subjects the offender to fine and imprisonment.

Section 7 requires manufacturer to label the packages with a printed notice that he has complied with the law, and cautioning all persons against a reuse of the package or removal of the stamp without canceling it. Neglect to affix the label or its removal without canceling punishable by a fine of \$50.

Section 8 taxes all oleomargarine 10 cents a pound, and applies the laws regulating the stamps on tobacco and snuff.

Section 9. Where a manufacturer removes goods without paying the tax the Commissioner of Internal Revenue shall have power to estimate and assess the tax.

Section 10. Imported oleomargarine shall pay an internal-revenue tax of 15 cents per pound; and all persons selling imported oleomargarine not put up in packages or stamped as required, are subject to fine and imprisonment.

Section 11. Every person who purchases or receives for sale any oleomargarine not branded or stamped, shall be liable to a penalty of \$50.

Section 12. Every person who purchases of a manufacturer who has not paid the special tax, to be fined \$100 and forfeit his purchases.

Section 13 requires stamps on empty packages to be destroyed under penalty of fine and imprisonment.

Section 14 provides for the maintenance of an analytical chemist and a microscopist at a salary of \$3,000 each, and empowers the Commissioner of Internal Revenue to employ such other experts as he may deem necessary. The Commissioner may decide as to whether any oleomargarine contains ingredients deleterious to public health; but his decision to be subject to appeal to a board composed of the Surgeon-General of the Army, the Surgeon-General of the Navy, and the Commissioner of Agriculture, and their decision to be final.

Section 15. All unstamped packages and all unhealthy oleomargarine shall be forfeited to the United States. Removal or defacement of stamps to be a misdemeanor.

Section 16. Oleomargarine may be exported without payment of tax or affixing stamps; but the tubs or firkins must be branded with the word "oleomargarine."

Section 17. Any manufacturer who defrauds or attempts to defraud the Government out of the tax shall forfeit the factory and contents, and in addition shall be fined not less than \$500 nor more than \$5,000, and be imprisoned not less than six months nor more than three years.

Section 18 punishes every manufacturer or dealer who neglect to do something he ought to do with a fine of \$1000. And forfeits all the oleomargarine he may own to the Government.

Section 19 gives one-half the fine and forfeiture to the informer.

Section 20. Commissioner of Internal Revenue may make all necessary rules and regulation to carry the act into effect.

Section 21 provides that the act shall go into effect on the ninetieth day after its passage.<sup>10</sup>

The House held a general debate on H.R. 8328 for two days, on May 24 and May

25. The debate on May 25, which lasted until 11 PM, required 45 pages in the

*Congressional Record*. The main arguments were laid out on the first two days of

debate and between May 26 and June 2, the House Committee of the Whole proceeded

through the bill section by section, proposing and debating amendments before final

votes on amendments and the bill itself were taken. Henry Bannard, in his 1887 article

on the *Oleomargarine Law*, found that while in general floor debates had been ruined

by Congressional procedures that limited most speeches to five or ten minutes, in this

debate, "nevertheless, the discussions were exceedingly thorough."<sup>11</sup> The speeches

were not necessarily much longer, but a large number of congressmen voiced their

opinions on the matter and every aspect of the issue was eventually explored in great

detail. The following three chapters will examine the motivation for the legislation,

arguments over the means proposed by the legislation, and how the bill progressed



through the House and Senate and was ultimately signed into law by President Cleveland.

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<sup>1</sup> Woodrow Wilson, *Congressional Government; a Study in American Politics* (Boston: Houghton Mifflin company, 1913), 79.

<sup>2</sup> Wilson, 67-68.

<sup>3</sup> *Congressional Record*, vol. 17, 49<sup>th</sup> Congress, 1<sup>st</sup> session. (hereafter abbreviated as 17 C.R.), 4909.

<sup>4</sup> "William Henry Hatch." *Dictionary of American Biography* Base Set. American Council of Learned Societies, 1928-1936. Reproduced in *Biography Resource Center*. Farmington Hills, Mich.: Gale, 2009. <http://galenet.galegroup.com/servlet/BioRC>

<sup>5</sup> See remarks of Rep. Poindexter Dunn, 17 C.R., 4918.

<sup>6</sup> "William Henry Hatch." *Encyclopedia of World Biography*, 2nd ed. 17 Vols. Gale Research, 1998. Reproduced in *Biography Resource Center*. Farmington Hills, Mich.: Gale, 2009. <http://galenet.galegroup.com/servlet/BioRC>

<sup>7</sup> "William Ralls Morrison." *Dictionary of American Biography* Base Set. American Council of Learned Societies, 1928-1936. Reproduced in *Biography Resource Center*. Farmington Hills, Mich.: Gale, 2009. <http://galenet.galegroup.com/servlet/BioRC>

<sup>8</sup> 17 C.R., 4966.

<sup>9</sup> 17 C.R., 4972.

<sup>10</sup> 17 C.R. 4911-4912.

<sup>11</sup> Henry C. Bannard, "The Oleomargarine Law: A Study of Congressional Politics." *Political Science Quarterly* 2, no. 4 (December 1887): 546.

### CHAPTER 3: THE MOTIVE

Concerns about oleomargarine were part of a wider discussion in the late-nineteenth century about the safety of adulterated food products. Representative Benjamin Frederick, an Iowa Democrat, referenced this wider adulterated food context in the House debate on May 25. “The introduction of poisons and compounds that are taken into the stomach under the name of various kinds of food is getting to be enormous,” Frederick stated “coffee, sugar, flour, syrups, butter, cheese, all kinds of jellies, and various other articles, are eaten daily by people who buy and pay a price for a genuine article, and the man who sells such truck is allowed to do so to the detriment of honest people who manufacture the genuine article.”<sup>1</sup> While oleomargarine was part of this larger issue of adulterated foods, concern about it was especially serious, and “by 1881 oleomargarine had become the most important food-adulteration issue.”<sup>2</sup> The number of state laws enacted, the number of proposed bills at the federal level, the number of petitions on the issue sent to Congress, and the wide coverage of the issue in both general and trade publications serve as ample evidence for this claim.

Aspects of the ongoing food adulteration discourse came out in three important ways during the debates. First, the language used to describe butter as opposed to oleomargarine was indicative of the general way adulterated food was compared with its more traditional competition. Second, the claims of fraud were central to the adulterated food discourse; in this case, the claim was that oleomargarine was being disguised and sold as butter. Related to that is the third point, that the adulterated food

manufacturing processes were unwholesome and resulted in products that were not safe to eat. This claim became easier to make just prior to these debates because by 1886 the principal manufacturing method of imitation butter products had shifted from the Megé process, which had powerful allies, to the butterine or pork derived lard butter products of the Chicago meatpacking companies such as Armour & Company.<sup>3</sup>

The language used to describe farmers, butter, and oleomargarine gave the debate a clear and evident moral dimension. Andrew Robertson, in his work analyzing the political rhetoric of this era, notes that “the most frequent charge in the Gilded Age vocabulary was corruption,” and “morality assumed an antithetical relationship to corruption.”<sup>4</sup> The word adulteration, which was so central to this debate, was a pejorative term, representing nefarious and corrupt activities. The debate over oleomargarine used language rich with symbolic meaning, with proponents of the legislation frequently proclaiming the goodness of butter and the wickedness of oleomargarine in order to gain the moral high ground on the issue. Those Representatives who were opposed to the legislation had a difficult time countering this line of attack. They argued that oleomargarine was not dangerous and was produced by “honest” businessmen, another important use of language from this period, but they could not make the counter-argument that oleomargarine was also the product of a proud noble profession.

Representative William Scott, a Pennsylvania Democrat who gave the first long speech in defense of the bill, introduced what became the common language used to

describe oleomargarine by the proponents of the bill. The tone of the language was harsh, angry, disdainful, and stark in its depiction of this new product and industry. For example, Scott remarked “the genius which has succeeded by the application of chemical fluids and compounds in transforming a mass of loathsome and unwholesome ingredients into an article of food at a trifling cost, does not hesitate to impose the product upon the public, and receive in the way of excessive profit the difference between the cost of the imitation or counterfeit article and that of pure butter.”<sup>5</sup> In other words, an evil genius used mysterious and synthetic ingredients to magically and inexpensively produce a product that appeared to be food and then made a large profit by fraudulently passing the product off as something it was most definitely not, butter. The language used by Scott is actually milder than that used by some of his colleagues, but the sentiment is the same. While words used to describe butter are pure and genuine, words used to describe oleomargarine are vile, nasty, offensive, and injurious.

Representative David Henderson, an Iowa Republican and future Speaker of the House, for instance, used a clever combination of biblical and literary references to contrast butter and oleomargarine.

You will find butter in the Bible from Genesis to Revelations. You will hardly find a book in the Bible that does not speak of butter. The article came into use before profane history was written. Milk and butter have been the food of man from time immemorial, and you do not need medical certificates or the resolutions of boards of trade to tell you that butter is a wholesome article of food. The experience of generations testifies to it. In all times it has been on the table of the king in his palace, and the poor man’s in his cabin. “Milk and honey!” Why, it was promised to the children of Israel in the desert. Herodotus speaks of butter four hundred and sixty years before the Christian era. The cow has taken the motherless babe through infancy and equipped with strength the gladiator struggling for life in the bloody amphitheaters of

Rome. Such articles of food, of all things, are entitled to kind consideration and the fullest protection from the lawmaker.

Now, let me give you the first record I find of oleomargarine. In the fourth act of the play of Macbeth, where there was a little cotillion of witches, I find oleomargarine completely described.

These witches had a great caldron in their midst, something like what our good friend Armour has in Chicago, to work up this product, or like the one which was testified about by a gentleman before the Committee on Agriculture.<sup>6</sup>

Representative Henry Spooner, a Rhode Island Republican who opposed the legislation, addressed this particular reference to Shakespeare, as well as some of the language used by the proponents of the legislation, on May 28, "They have called it 'bogus,' 'counterfeit,' 'dirty,' 'filthy,' 'poisonous!' Adjectives have failed them with which to express their disgust and abhorrence; and the gentleman from Iowa [Mr. HENDERSON] apparently attempted to persuade the House that the recipe from which it is usually manufactured is identical with that by which the 'witches broth' in Macbeth was compounded! Yet I have heard no authentic statement in support of such extraordinary charges; nothing save wild and extravagant assertions, based upon little else than vague speculations and suspicions; for it certainly is not 'bogus' or 'counterfeit' if it is sold for what it is."<sup>7</sup>

In addition, there were also frequent references to and an idealization of the farmer. The farmer was characterized as humble and noble, only coming for government assistance in this dire circumstance. Representative Henderson on May 25, made this impassioned appeal on behalf of the farmer: "Let Congress here and now do its whole duty by those honest, generous, modest tillers of the soil, whose sinewy arms, rugged hands, and honest hearts are impregnable fortresses of safety to the nation."<sup>8</sup>

Representative Seth Milliken, a Maine Republican, praised the farmer as well,

The farmers are the conservative force of the country, to be relied upon in times of excitement which threaten the good order and safety of society. Who ever heard of a riot of farmers? They are not those who pull down the column Vendome, who destroy the Tuileries, with all those records so valuable to mankind. They are rather the conservators of the genius and labor of the past. They are neither communists, socialists, nor anarchists. They above all others are sober-minded and deliberate. Their patriotism is proverbial. Their possessions are a part of the country itself. They can not pocket these and depart for other lands. If we have bad government they can not escape it. They must live under and suffer it or improve it.<sup>9</sup>

His argument contrasts the farmer and rural citizens of the United States with the instigators of the labor strikes and the Haymarket Affair of May 1886, glorifying the former while denigrating the latter as bunch of foreign radicals. The praise for the noble, humble farmer was overwhelming from the proponents of the legislation, as they attempted to establish the claim that the agrarian heart of the country was being victimized by the foul product of corrupt business.

Opponents of the legislation had a difficult challenge. It was not a politically viable position to criticize farmers, so they instead had to show how the legislation would not be good for farmers in the long run. Representative George Cabell, a Virginia Democrat, made the claim that farmers were indeed noble, and that is why they would oppose this bill. Cabell argued that farmers “will not be duped into the advocacy or toleration of a measure pretendedly for their benefit but really for their injury and the injury of all those who abhor monopolies and deprecate unnecessary taxation.”<sup>10</sup> This dilemma was magnified by the long tradition of agrarian populism in this country, which in its strongest form “was convinced of some inner moral light shining forth from the farmer’s way of life.”<sup>11</sup> The extent and limitations of agrarian influence on electoral

politics was soon to be dramatically seen in the rise and fall of the People's or Populist Party in the 1890s.

The second component of the adulterated food argument dealt with the issue of fraud. Every speaker in the debate argued that consumers should know what they were eating and were entitled to a clear choice between the two products. Where the speakers differed was in how much of a problem it was, and how to address the problem. The strongest proponents of the legislation argued that oleomargarine was being fraudulently sold as butter, that the method of manufacture involved some questionable practices and some nefarious ingredients, and that butter sales at home and abroad were being adversely affected. Representative George Dorsey, a Nebraska Republican, made the case in his remarks on May 26. "The issue is a very simple one. Shall the manufacturer of oleomargarine and butterine be encouraged and the farming interests further injured, if not entirely destroyed, or shall we encourage and protect those who are engaged in a legitimate business and are making an article that is pure and wholesome and that can be used without the fear that we are consuming that which is detrimental to health and fruitful of disease."<sup>12</sup>

To a great extent, legislators opposed to the bill also expressed disdain for oleomargarine. Perhaps no other representative was willing to say, as Representative George Tillman, a South Carolina Democrat, did, that "oleomargarine, when it is honestly made out of good materials, is not only as good as butter, but it is better. [Laughter]"<sup>13</sup> There were a number of legislators occupying a middle ground, such as

Representative William Brown, a Pennsylvania Republican, who disliked oleomargarine a great deal but felt the bill in its current form went too far, and would only support it if substantive changes were made. On May 25, Brown, a lawyer and Union Army veteran, remarked, "I hate oleomargarine, and my principal reason for hating it is because it is an imitation, a counterfeit. I dislike this bill in its present shape because it is a fraud. It is just as much of a fraud as oleomargarine. It professes to be one thing and is another. It is simply fighting fraud with a fraud."<sup>14</sup>

Representative Lewis Beach, a New York Democrat, illustrated the issue of fraud with the following anecdote:

Now, let us look for a moment at the two articles when they come in competition in the open market. I have before me a circular just issued by a manufacturer of artificial butter in my own State of New York, in which he advertises his 'New Spring Butterine' at 13 cents per pound. The other day I received a letter from a New York retail grocer in which he said he was paying 30 cents a pound for Western creamery butter and was selling it over the counter for 35 cents. On the same block with him there was another grocer who dealt in butterine. He bought it for 13 cents a pound and sold it as butter for 25 cents. Now mark the consequences. My correspondent, who is too honest to deal in the spurious article, makes but 5 cents a pound on genuine butter, while his neighbor makes 12 cents a pound on the counterfeit article. And not only this, but the dishonest dealer, by reason of selling 5 cents a pound cheaper, has robbed the honest dealer of nearly all his trade. The honest trader makes only 16 per cent profit, while the dishonest one makes 100 per cent.

Now, in this kind of trading some one is cheated. The man who is getting a profit of 100 per cent is getting more than he is entitled to under the fair and usual profits of business; and those who pay the excessive profits—the people, the great masses—are being cheated. Why are they cheated? Because they think they are buying natural butter, the market price of which is well known; whereas, in fact, they are getting a counterfeit article. If butterine was sold for its actual value—say 15 cents a pound—the suspicion of the buyer would at once be aroused. Hence, the price is raised to assist in the deception.<sup>15</sup>

Representative John Farquhar, a New York Republican who ultimately voted for the bill, made the claim that the oleomargarine produced by large manufacturers, such



as Armour & Company, was marketed for exactly what it was. However, Farquhar was not willing to absolve all interested parties, “The great trouble that surrounds this question is the fact that middle-men and others, independently of the manufacturer himself, palm off this article on the public as butter itself.”<sup>16</sup> These products were so close in appearance and taste that it was extremely difficult to tell them apart. Since oleomargarine was so much cheaper to make, there was a great profit motive for selling it to the consumer as butter. In an unregulated industry, with little to no money set aside for inspection, it was impossible to tell how much fraud was actually occurring, but in these early days of the oleomargarine industry evidence that some fraud was happening was enough to raise the fears of farmers, consumers and legislators.

The third component of the adulterated food argument called into question the safety of the processes and the ingredients used for making oleomargarine. While the fraud issue was taken seriously by many, the claims of unwholesomeness were largely made by the strongest proponents of the legislation. Representative Millard, a New York Republican, made an argument that was repeated frequently by other legislators:

If you will take the trouble to visit the Patent Office you will find that nearly two hundred patents for the manufacture of imitation butter have been issued since 1872, the date of the granting of the original patent. That in the place of margarine oil more than fifty kinds of acids and chemical ingredients are used. Nitric acid, sugar of lead, castor oil, sulphate of lime, mustard seed oil, cotton-seed oil, and the Lord only knows what—vegetable oils mixed with grease, lard, and the fat of animals. Nitric acid is used for the purpose of removing the peculiar odor of grease and lard, and it is a startling fact that there is no power under the heavens by which you can tell whether the lard was taken from a healthy or diseased animal.<sup>17</sup>

Nine other Representatives made the exact same argument, although the number of patents registered and the date of the first patent, which was actually 1874, varied in the retelling.<sup>18</sup> Their claim was that there may be a wholesome way of making oleomargarine, but if you go to the Patent Office you will find an enormous number of different formulas with all sorts of ingredients in them. They argued that the manufacture of oleomargarine was wildly uncontrolled and that consumers did not know whether they were buying oleomargarine or butter in the store. Furthermore, consumers did not know which oleomargarine they were buying, what was in it, or what adverse effects it might have on their health.

The last sentence of Millard's argument presented another frequent claim, that some of the fat used to make oleomargarine was coming from diseased animals. These claims were designed to call into question the practices of the oleomargarine industry, increase fears about this product, and garner support for its regulation. It was the fear of the unknown and the fear of a tainted food supply. The genuine fear was that an individual could unwillingly purchase oleomargarine, believing it to be butter, and possibly suffer the consequences of eating a product made by an unscrupulous manufacturing enterprise. The argument for legislation of adulterated foods, which had begun in Congress in 1879, centered on these two questions, was there a fraud and was it injurious to health?<sup>19</sup>

Arguments against claims of unwholesomeness mainly took the following two forms: the product was not unwholesome; and the production of butter also involved

questionable practices. Representative Poindexter Dunn, an Arkansas lawyer, stated, “I have never heard of this compound called oleomargarine killing anybody. They say there are manufactured and sold some 200,000,000 pounds of it per annum. It is marvelous that it should have gone on to this extent without killing everybody in the country if it is the horrid compound it is said to be.”<sup>20</sup>

Scientists were used in this debate by both proponents and opponents of the legislation. There was no scientific consensus about the healthfulness of oleomargarine, and both sides paid scientists to prove their case.<sup>21</sup> A Mr. Michels, identified as “a well-known microscopist and the editor of a scientific journal,” was quoted by Representative Frank Hisock, a New York Republican, as stating that “oleomargarine is simply uncooked, raw fat, never subjected to sufficient heat to kill parasites which are liable to be in it; that those who eat it run the risk of trichinae from the stomachs of animals which are chopped up with the fat in making it.”<sup>22</sup> Representative Spooner countered with the testimony of “manufacturers, chemists, scientists, and physicians” to establish the wholesomeness and safety of oleomargarine, but it is important to note that he included the caveat “if it is sold for what it is.”<sup>23</sup>

Representative Andrew Curtin, a Democrat from Pennsylvania, tried to turn the tables by calling into question some of the practices involved in butter production. “In the butter produced all over this country there is an admixture of potatoes and carrots and beets, which give it weight and color. Why not inquire into that? By a process now patented people can take stale, rancid butter and convert it into what seems like a good

article of food. Why not go for that?”<sup>24</sup> While the argument was relevant, because there were unfair and unclean practices in the production of most food products, and there had always been concerns and debates about adulterations of and safety issues about agricultural products, it was difficult at this point in this debate to criticize butter. Furthermore, an argument that would come up frequently in the course of these and later debates on oleomargarine legislation was the acknowledged practice of coloring butter yellow. Not all butter was naturally yellow, in particular butter made from cows in the winter tended to be pale, and it was a common practice to use a coloring additive to make butter look uniformly yellow year round. Opponents of oleomargarine legislation would repeatedly make this point about butter, but it had little, if any, impact on the final legislation.

The debate over oleomargarine occurred at the beginning of the creation of our regulatory system for food. Okun points to the 1886 Oleomargarine Act not as a model piece of legislation, but as the realization that “only the federal government could begin to cope with the problem”<sup>25</sup> of food adulteration. We now take it for granted that ingredients will be listed on the packages of food products, and assume that product recalls will occur when there is an outbreak of food-borne illnesses, but at the time of this debate consumers had no idea what the ingredients in their food were and no sophisticated mechanisms for tracking illnesses back to their source. There was a great fear of these new manufactured food processes—they were seen as a threat to the agricultural heart of the country. Proponents of the legislation had the benefit of a

strong moral argument. In addition to fighting fraud and unwholesomeness, they were defending the farmer and therefore the country.

Opponents of the bill ultimately conceded that the dairy farmer was an aggrieved party, but they argued that this was the wrong way to handle the issue, that Congress did not have the power to destroy one industry in favor of another, that Congress should be eliminating the internal revenue system and not expanding it, and that the product had been proven to be wholesome and was manufactured by reputable businesses. Many of these opponents sought to amend, and often to derail the bill, by attaching both related and unrelated measures. There were also those who agreed there was a problem and sought to change the means of addressing it; it was this group of legislators who had some success in ultimately reducing the per pound tax on manufacturers.

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<sup>1</sup> 17 C.R., 4901.

<sup>2</sup> Mitchell Okun, *Fair Play in the Marketplace: The First Battle for Pure Food and Drugs* (Dekalb, Ill: Northern Illinois University Press, 1986): 264.

<sup>3</sup> Okun, 271-282

<sup>4</sup> Andrew W. Robertson, *The Language of Democracy: Political Rhetoric in the United States and Britain, 1790-1900* (Ithaca: Cornell University Press, 1995), 155-156.

<sup>5</sup> *Congressional Record*, vol. 17, 49<sup>th</sup> Congress, 1<sup>st</sup> session. (hereafter abbreviated as 17 C.R.), 4865-4866.

<sup>6</sup> 17 C.R., 4905.

<sup>7</sup> 17 C.R., 5044.

<sup>8</sup> 17 C.R., 4910.

<sup>9</sup> 17 C.R., 5042

<sup>10</sup> 17 C.R., 4979.

<sup>11</sup> Grant McConnell and American Farm Bureau Federation, *The Decline of Agrarian Democracy* (Berkeley: University of California Press, 1953), 7.

<sup>12</sup> 17 C.R., 4982.

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<sup>13</sup> 17 C.R., 5123.

<sup>14</sup> 17 C.R., 4938.

<sup>15</sup> 17 C.R., 4910

<sup>16</sup> 17 C.R., 4926.

<sup>17</sup> 17 C.R., 4894.

<sup>18</sup> May 24 (Hopkins); May 25 (Cannon, Henderson, Grout, Brown); May 28 (Townshend, Lore); May 29 (Barksdale); June 1 (Evans).

<sup>19</sup> Thomas A. Bailey, "Congressional Opposition to Pure Food Legislation, 1879-1906," *The American Journal of Sociology* 36, no. 1 (July 1930): 52-64; Mitchell Okun, *Fair Play in the Marketplace: The First Battle for Pure Food and Drugs* (Dekalb, Ill: Northern Illinois University Press, 1986); Lorine Swainston Goodwin, *The Pure Food, Drink, and Drug Crusaders, 1879-1914* (Jefferson, N.C: McFarland, 1999).

<sup>20</sup> 17 C.R., 4918.

<sup>21</sup> Okun, 282.

<sup>22</sup> 17. C.R., 4978.

<sup>23</sup> 17 C.R., 5044.

<sup>24</sup> 17 C.R., 4896.

<sup>25</sup> Okun, 285-286.

## CHAPTER 4: THE MEANS

Where the greatest disagreement came was not over whether there was a genuine problem with oleomargarine, but whether the means proposed was appropriate. Was a revenue measure the correct strategy and was this a true revenue measure, or a thinly disguised effort to wipe out the oleomargarine industry through extraordinarily heavy taxation? Was the revenue needed? Should we have a revenue system at all? Should Congress be involved at all or was this was an issue that should be left to the States? This last question was brought up repeatedly, particularly by southern Democrats who may have been primarily interested in a potential market for cottonseed oil, but who also had a long, and occasionally disastrous, history of fighting for states' rights. Related to the question of states' rights was the question of interstate commerce, brought up by proponents of the bill who argued that it was not an issue for just the states to resolve because it involved trade across state lines.

The bill's relationship to the tariff question was also important, and took center stage during the May 26 session. As the *New York Times* reported in its coverage, "the confidence of Napoleon that you could not scratch a Russian without tickling a Cossack was not better founded than the expectation that you cannot stir a question of revenue, and hardly one of expenditure, without raising more or less excitement on the tariff question."<sup>1</sup> Likewise, comparisons and contrasts were made with taxes on products such as tobacco and whiskey, which did not deal with issues of fair competition but had a strong moral argument for their continued existence. In addition, important appeals

on the integrity, or lack thereof, of businessmen and the potential impacts of this bill on the laboring class were key elements of the debate on this tax measure. Like the language used to describe butter, oleomargarine, and farmers, the language used to describe, denounce, and defend businessmen and laborers gave the debates an important emotional and moral weight that amplified and exaggerated what would be at stake as a result of this legislation.

What was most objectionable to the opponents of the legislation was not the stated motive of those in favor—that this was a revenue measure designed to prevent fraud—but rather that they felt the solution was inappropriate and deceptive as to its true intent, which they alleged was to absolutely destroy the oleomargarine industry. That their focus was largely on the means ceded the question of whether there was a genuine problem. Opponents of the legislation were unwilling to make the claim that oleomargarine should be allowed to compete freely with butter, without any branding or labeling or other measures to ensure that consumers were fairly warned. This was not a politically acceptable position. Farmers were held in too high regard and it was also not fair to the consumers to deceive them and put them at risk.

The true intent of the legislation was called into question repeatedly and quite directly by opponents of the bill. Representative John Reagan of Texas, stated on May 24, “if the object was to tax oleomargarine for revenue, it would be within the power of Congress to levy such a tax, but the object manifestly being to drive it out of existence, to destroy it as a product, there is, in my judgment, no power under the Constitution



authorizing the passage of such a bill.”<sup>2</sup> A key argument of many opponents of the bill was that Congress had the power to tax, but Congress did not have the power to tax in order to protect one domestic industry from competition with another.

Some proponents argued, like the Mississippi Democrat James Morgan, that “this is a revenue bill, framed for the purpose of raising revenue.”<sup>3</sup> However, there were proponents of the legislation who spoke quite openly about their desire to see the oleomargarine industry destroyed. Representative Millard frankly remarked that “the right to manufacture and sell an unwholesome or fraudulent article of food should be prohibited, not taxed. This oleomargarine business is a bad business. It is conceived in fraud and brought forth in iniquity, and the sooner it is exterminated the better it will be for us.”<sup>4</sup> Those who voiced some sympathy for the bill could be aligned on a scale with those preferring low or no taxation on one end and those who preferred the taxes as proposed, or even higher, on the other end. The question of the rate of taxation was at the heart of the argument over the true intent of the legislation, for higher rates meant lower or no profits and thus decreased the incentive for businesses to operate. The rate of taxation question became the critical issue in the debate and the focus of the majority of the amendments offered.

The argument was made by several Representatives that the revenue was not needed, and these arguments were countered by proponents who said the revenue was very much needed and/or could be used to lower or eliminate taxes on other items. All

who commented on the matter were able to find figures to support their claim.

Representative John Tucker of Virginia stated on May 25:

Do we need the revenue? Why, sir, during the last six months of the year the imports of this country have been forty millions more than for the corresponding six months in the last year, and that would be eighty millions increase in one year. At 40 per cent. It would raise an increased revenue in this country amounting to \$32,000,000. There are two hundred millions of oleomargarine made in this country, by the report of my friend from Missouri [Mr. Hatch]; 10 cents on that is \$20,000,000 more. With an overwhelming Treasury, why put twenty millions more into it?<sup>5</sup>

Representative David Henderson of Iowa presented a markedly different economic scenario. "As will be seen the Secretary of the Treasury estimates that there will be a deficit of \$24,589,000 on the 30<sup>th</sup> day of June, 1887, and he states in detail the basis for his conclusion. Now, this is not any rambling statement. It is a careful official estimate submitted by the official financial head of the Republic."<sup>6</sup>

The issue appeared to be a draw in this debate, but the issue of the need for revenue and the need for an internal revenue system was repeatedly brought up in Congressional debates during this time period, particularly by the Democrats. Legislators were constantly trying to alter the balance between sources of revenue, and between revenues and expenditure. Their stances were based on ideological considerations on issues such as the size and role of the federal government and the cost of consumer goods, but they were also driven by very local and practical considerations such as the protection of industries that were important in a member's home district or state.

There were opponents of the bill who objected to the entire system of internal revenue. Representative Tucker of Virginia stated his opposition to the bill on these

grounds, claiming it impinged on personal freedom. “It arranges an enormous machinery, by which the whole of that industry, the tobacco industry, the whisky industry, for instance, is put under the surveillance—by the bye, that word is in this bill—under the surveillance of the internal revenue system.”<sup>7</sup> Tucker was one of the Democrats pushing for less taxation in general, and this issue is the focal point on where the Democrats split.

Another critical argument made by opponents of the legislation was that this was an issue that should be left to the states. Representative John Reagan was one of the main proponents of this idea. Reagan stated, “I would not, because evils of this kind require to be regulated, strike down our system of Government and overturn the Constitution; for these matters can more properly be regulated by State authority.”<sup>8</sup> The states’ rights argument was a central issue in a great many debates in the second half of the nineteenth century, and Democrats from the south were the strongest proponents of states’ rights. The states’ rights argument was an essential component of legislative debates regarding slavery before the Civil War. After the Civil War, southern Democrats maintained their defense of states’ rights and their interpretation of the Constitution, but the specter of the disastrous consequences of their strict adherence to this line of argument was still visible in 1886, some twenty years after the close of the great conflict.

Reagan, a Democrat from Texas who had served in Congress before the war, was postmaster general of the Confederacy and then Acting Secretary of the Treasury at the

close of the War, before returning to the U.S. House in 1875. The urge to bring up the Civil War in reference to the states' rights argument proved too great to resist for Representative William Hepburn, an Iowa Republican, on May 25 when the following exchange occurred between him and Representative Reagan.

Mr. REAGAN. Does it satisfy the gentleman's conscience because others have violated the Constitution he also can do so?

Mr. HEPBURN. I do not propose to violate the Constitution. I am not one of those, I will say to the gentleman from Texas, who can in the morning take an oath to support the Constitution and before night begin to plot against its integrity and seek to overthrow it. [Applause on the Republican side.] I have read the Constitution, and it has so impressed itself upon me that I do not think I can ever raise my hand against it. [Applause]

Mr. REAGAN. It is always the last resort of the gentleman from Iowa, when he is cornered in argument, to talk about the rebellion.

Mr. HEPBURN. I do not know and I do not care whether it is the first or last resort, but it is something men have the right to talk about. For, sir, it was the grand transcending theme of this century. It was the great crime of the century. It was the most useless and wicked expenditure of noble lives of blood, and of treasure which men have ever indulged in in this century or in any other. [Applause]<sup>9</sup>

Hepburn was attempting to parry charges that the bill was beyond the limits of what the Constitution allowed by personally attacking the qualifications of Representative Reagan and his southern Democrat colleagues to determine the question. The language was heated and personal, demonstrating a lingering deep-seated resentment left over from the Civil War or at the very least a willingness to use the Civil War as a rhetorical weapon when presented with an opportunity to do so. Representative Reagan was an obvious target for this sort of attack, but Hepburn must have felt comfortable making the charge, in part, because there was a significant regional split on this issue.

Another counter-argument to the claim that this was an issue that belonged to the states was one that Representative William Grout, a Vermont Republican, made about interstate commerce. "Massachusetts, with about five and one-half times the

population of Vermont, makes about one-third as much butter. As the result Vermont butter finds its way into Massachusetts markets, and there encounters these imitation products, which the laws of Massachusetts fail to prevent being sold as butter, thus putting Vermont butter at a very serious disadvantage.”<sup>10</sup> Grout claimed that even if Vermont prohibited oleomargarine outright, Vermont butter traveled to markets where it had to compete with oleomargarine, and therefore a state-by-state piecemeal approach was not sufficient. In 1902, when the oleomargarine issue was reconsidered, this matter of interstate commerce had moved to the forefront of the debate.

The issue of interstate commerce may have been brought up with the express intention of making a connection to the bill to create the Interstate Commerce Commission (ICC), which would soon come up for debate in this same session. While the ICC legislation was about railroad regulation, especially rates, the two issues are connected. The consideration and eventual passage of the ICC bill showed that Congress was increasingly willing to add new regulatory responsibilities for the federal government.<sup>11</sup> Supporters of the oleomargarine bill were also asking the federal government to expand its reach, arguing that the issue could not be handled by the states on their own. Interestingly, Representative Reagan was the chair of the Interstate Commerce Committee and would play a key role in shepherding the legislation through the House.<sup>12</sup>

There was an ideological split amongst those who opposed this legislation, particularly within the Democratic Party, on the question of tariffs. There were

members who favored high tariffs, protectionists, but opposed this legislation and other internal revenue measures, and members who opposed both high tariffs and this legislation. Representative Thomas Browne, an Indiana Republican who opposed the bill, remarked on May 26, "I am a protectionist, but I have been, so far as my votes are concerned, in favor of protecting American industries against the invasion of the foreign products of cheap labor."<sup>13</sup> Representative William Kelley of Pennsylvania was the key figure who favored tariffs but opposed this bill, and in fact most internal revenue measures. Kelley had been in the House since 1861 and was a leading defender of tariff legislation. During the debate he was taken to task by Representatives Henderson, of Iowa, and Price, of Wisconsin, fellow Republican protectionists, for being a protectionist when it came to tariffs, particularly when it benefitted Pennsylvania iron, but not in this important case of protecting farmers. Representative William Morrison, an Illinois Democrat, took on all three Representatives, rising to voice the more extreme position of being against the bill under consideration, taxation in general, and the high tariffs.

The discussion on this topic showed the strong connections between the issues of protection and revenue. The government needed money for expenditures. How much money was needed and for what were points of contention. The two main systems for raising revenue were through tariffs and excise taxes, or taxes on domestically produced goods. Tariffs were, at this point, the larger source of revenue, accounting for 56 percent of revenue in 1880 as opposed to 34 percent from excise taxes. Internal taxes generated less money and had been historically tied to wartime

expenditures. During the Civil War, both excise taxes and an income tax had been enacted. The income tax and most of the excise taxes had been abolished in the 1870s, leaving tobacco and whisky taxes as the main source of internal revenue by 1880.

In 1886, tariffs were an exceptionally important source of revenue. Tariffs were also seen by many as critical for the protection they provided producers of domestic goods against foreign competition. The main charges against tariffs were that they raised the price of consumer goods and that they produced too much revenue. There were also some legislators who felt that by reducing or eliminating tariffs the growth or expansion of federal government would be slowed down by a reduction in the amount of revenue available to fund new government programs. In this respect, the strategy has much in common with 1990's efforts of Republicans to reduce taxation, and thus revenue, with the aim of reducing the size of the federal government. Internal taxes were not popular, but in the case of tobacco and whisky, there was a moral component to the taxation that mitigated this unpopularity.

The proposed tax on oleomargarine was a hybrid, a domestic tax that looked like a tariff in that it protected one industry from another. It was meant to protect dairy farmers against domestic as opposed to foreign competition, and it had the strong moral component of being a tax on a largely reviled adulterated food product. The issue was complicated for legislators and the general public because it inserted the government into a matter between two competing domestic industries. Furthermore, the issue was complicated because there was an ongoing debate within Congress, and

particularly within the Democratic Party, about the balance between internal revenue and tariffs, with many legislators increasingly objecting to the high tariffs.<sup>14</sup>

While generally advocating less taxation and government, the Democrats were making exceptions, including this bill, as they tried to navigate their way through these complex revenue questions. That the usual lines were blurred was noted by Representative Poindexter Dunn, a Democratic opponent of the bill from Arkansas, who stated that, “When the debate on this bill shall have been finished we will find the free-trader standing side by side with the pig-iron protectionist, the advocate of the greatest amount of liberty, of the greatest measure of personal freedom to the individual, heretofore supposed the irreconcilable enemy of sumptuary legislation, standing side by side, hugged breast to breast, lying cheek by jowl, with the advocates of the blue laws and sumptuary legislation.”<sup>15</sup> Representative James Morgan countered that it was a revenue measure that could take the burden off of other goods, “The whole outcry here about internal-revenue taxation is raised by gentlemen who want to take the tax off whiskey and tobacco and keep it on the blankets with which the poor widows and orphans of the country wrap themselves in winter.”<sup>16</sup>

Representative Andrew Curtin of Pennsylvania, on May 25, introduced the claim that taxation was a burden to the laboring class, by referring to the Knights of Labor and their leader Terence Powderly. “I admonish my friends on this floor that there is in this country an organization numbering a million members which meets in convention today in the city of Cleveland. Thank God the proceedings of that great organization—



republican in form, within the Constitution and the law, conservative in all its operations—will be controlled by friend Powderly, and its action will be in the interest of labor in this country without interfering with the rights of capital. Now, that organization desires that this legislation shall not pass.”<sup>17</sup>

The Knights of Labor filled the vacuum left by the demise of the National Labor Union in 1873 and grew rapidly through the 1870’s and 1880’s reaching its peak, in terms of membership numbers, in 1886. The Knights would soon become significantly less of a force, but in 1886 they and Terence Powderly were a major voice for laborers. Robert Weir, while insisting we be careful not to overemphasize Powderly’s role in the Knights, describes him as “labor’s first media ‘superstar’” whose “opinions were sought by journalists, ministers, industrialists, politicians, and educators, as well as by workers and reformers.”<sup>18</sup>

Whether the Knights of Labor officially opposed this bill or not was somewhat unclear. Several petitions against the bill from local outposts of the Knights of Labor were introduced into the record but the national organization did not take an official position. In fact, Representative Hatch read a telegram from Powderly on May 29 that stated, “Acting under instructions from the General Assembly of the Knights of Labor, I desire to state that no person whatever is authorized to speak for this organization, either in the affirmative or negative, upon the question of the regulation of the sale of oleomargarine now pending before Congress.”<sup>19</sup> The Knights of Labor, at the national level anyway, probably did not want to take a stand in opposition to dairy farmers,

whom they saw as co-members of “a broad producing class.”<sup>20</sup> This connection to the agrarian class would go even further with the official endorsement of the agrarian People’s Party in 1892.<sup>21</sup>

The question of how this tax would impact the laboring class came up repeatedly. Opponents of the legislation said this measure might help dairy farmers but it would adversely impact the working classes who could not afford the high-priced butter and wanted a lower priced alternative. Others, like Representative Benjamin Frederick of Iowa, countered, “This is an insult to the poor and laboring classes. Where is the man be he ever so poor, who will buy a compound of villainous mixtures knowingly for food for his family? Not one exists...The fact is, as shown by all testimony, that it will not sell when known.”<sup>22</sup> The argument attempted to appeal to the sense that members should not denigrate the poor by implying that they would eat just about anything, but the argument avoids the question of the price of food.

Representative Grout did try to address the question of the price, by stating that “If oleomargarine be the poor man’s blessing, as is claimed, it should be secured to him at the poor man’s price. But this will never be till compelled, as proposed by this bill, to go upon the market in no guise but its own and under no name but its own.”<sup>23</sup> The claim was that oleomargarine was fraudulently sold as butter at or near the price of butter, and therefore the laborer needed this legislation in order to get a fair price for oleomargarine.

The claims on behalf of laborers are the flip side of the appeals on behalf of the farmers. The proponents of the legislation did have the support of many farmers as seen by the numerous petitions submitted by dairy organizations. The opponents attempted to counter these petitions with their own from labor groups. The results were less impressive, as evidenced by Powderly's unwillingness to take sides in the dispute.

A slightly different rhetorical battle occurred when capitalists were discussed. Here the argument became a contest between frequent denigrations of the character and nature of the manufacturing interests and speculators and the defense of these individuals and groups. Responding to claims made in petitions from various Boards of Trade that "the legislation is injurious to the poor man," Representative Hopkins remarked, "God help the poor man if all the rights he enjoys are obtained and preserved through such sources! ... Beware of these gift-giving Greeks!"<sup>24</sup> Boards of Trade were the "speculators" dealing in agricultural futures. They were wildly unpopular with the general public and particularly farmers, who saw the business of speculating on staple agricultural commodities as "morally distasteful."<sup>25</sup>

Representative Ransom Dunham, an Illinois Republican and former President of the Board of Trade in Chicago, came to the defense of the boards of trade in the following exchange with Representative William Price, a Republican from La Crosse, Wisconsin:

Mr. DUNHAM. The gentleman talks about their 'purposes.' I would remind him that we had a riot in Chicago a few days ago, and our board of trade raised \$15,000 for the benefit of the families of the policemen who were killed in the streets by the socialists.

Mr. PRICE. They could well afford to raise that sum to mitigate, in some degree, the injuries resulting from a bloody riot superinduced by the wide distinction made between the laboring classes on the one hand and those who stand upon the necks of better men than themselves and grind them into powder. If those men had conducted themselves decently in the years of the past, recognizing their fellow-men as belonging to the great brotherhood of man, there would have been no riot there. There has been none in my town, and none anywhere men have been treated decently.<sup>26</sup>

As on previous points discussed, both speakers are making a moral argument here with the emphasis again on the recent Haymarket Affair. Dunham tried to come to the defense of the Chicago Board of Trade by noting their charitable contributions to the families of policemen. He does not, however, contrast the Board of Trade with an evil force represented by the proponents of the legislation. Price, on the other hand, was all too willing to cast the Board of Trade as the evil force who represented the true cause of the labor riot.

There were those, both for and against the legislation, who defended the major establishments. Speaking of the source of petitions opposed to the legislation, Representative Hepburn stated, "I am glad to say that the whole of this opposition emanates from a single house in the City of Chicago which manufactures 9,000,000 pounds of this bogus butter; and yet I am free to say that in my humble judgment it is the best and the purest that is made."<sup>27</sup> Representative Dunham swore to the virtues of Armour & Company, "one or two gentlemen have referred to this firm of Armour & Co., and I happen to know them, and know them well, and I know them to be as high-toned and honorable merchants as these gentlemen or any others ever knew."<sup>28</sup> The

argument thus became one between characterizations of corrupt businessmen and business practices, and fine upstanding businessmen. Again, these claims fit Andrew Robertson's model of political rhetoric during this era, which featured competing characterizations of honest businessmen and corrupt monopolists and speculators.<sup>29</sup>

The debate over the means of the legislation was highly contentious. The strongest proponents wanted a high rate of taxation while the fiercest opponents did not see a probl. There were many members in the middle who wanted to do something but had problems with the level of taxation or that it was a tax measure at all. There were serious political debates occurring on this issue and others that were defining a new era in the federal government, an era that saw increased regulatory responsibility given to the government. At this point in time, many of these questions were unsettled. For instance, if the issue was fraud why wasn't the means proposed strictly to regulate the oleomargarine industry? The answer, in some respects, is connected to a matter of path dependence. There was no regulatory food system in place but there was an internal revenue system. Furthermore, while it was widely acknowledged that Congress had the power to tax, the ability of Congress to regulate interstate commerce was not settled. Proponents of oleomargarine legislation believed it would be easier to pass the constitutionality test with a revenue measure, even if that measure set the taxation at a very high rate that might doom the oleomargarine industry. While outrage over oleomargarine was widely expressed in the debate, enthusiasm for the tax measure as proposed was more muted, and outright opposition was loud if not large. These

competing enthusiasms would prove to be critical in shaping the eventual form and outcome of the bill.

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<sup>1</sup> "THE IRREPRESSIBLE TARIFF," *New York Times* May 27, 1886.

<sup>2</sup> *Congressional Record*, vol. 17, 49<sup>th</sup> Congress, 1<sup>st</sup> session. (hereafter abbreviated as 17 C.R.), 4870,

<sup>3</sup> 17 C.R., 4919.

<sup>4</sup> 17 C.R., 4894.

<sup>5</sup> 17 C.R., 4898.

<sup>6</sup> 17 C.R., 4904.

<sup>7</sup> 17 C.R., 4899.

<sup>8</sup> 17 C.R., 4870.

<sup>9</sup> 17 C.R., 4902.

<sup>10</sup> 17 C.R., 4935.

<sup>11</sup> Michael F. Holt, "Change and Continuity in the Party Period," in *Contesting Democracy: Substance and Structure in American Political History, 1775-2000* (Lawrence, Kan: University Press of Kansas, 2001), 100.

<sup>12</sup> William James Hull Hoffer, *To Enlarge the Machinery of Government: Congressional Debates and the Growth of the American State, 1858-1891* (Baltimore: Johns Hopkins University Press, 2007), 162-164.

<sup>13</sup> 17 C.R., 4966.

<sup>14</sup> Morton Keller, *Affairs of State: Public Life in Late Nineteenth Century America*. (Cambridge: Belknap Press of Harvard University Press, 1977), 307-309.

<sup>15</sup> The Oxford English Dictionary defines sumptuary law as a law regulating expenditure, esp. with a view to restraining excess in food, dress, equipage, etc. "sumptuary, *a. (n.)*" The Oxford English Dictionary. 2nd ed. 1989. OED Online. Oxford University Press; 17 C.R., 4917.

<sup>16</sup> 17 C.R., 4920.

<sup>17</sup> 17 C.R., 4897.

<sup>18</sup> Robert E. Weir, *Knights Unhorsed: Internal Conflict in a Gilded Age Social Movement* (Detroit: Wayne State University Press, 2000), 13, 16.

<sup>19</sup> 17 C.R., 5074.

<sup>20</sup> Keller, 396.

<sup>21</sup> Weir, 169.

<sup>22</sup> 17 C.R., 4901.

<sup>23</sup> 17 C.R., 4932.

<sup>24</sup> 17 C.R., 4869.

<sup>25</sup> Keller, 415.

<sup>26</sup> 17 C.R., 4930.

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<sup>27</sup> 17 C.R., 4903.

<sup>28</sup> 17 C.R., 4915.

<sup>29</sup> Andrew W. Robertson, *The Language of Democracy: Political Rhetoric in the United States and Britain, 1790-1900* (Ithaca: Cornell University Press, 1995), 158.

## CHAPTER 5: A BILL BECOMES A LAW

On May 26, 1886, after two full days of debate on the oleomargarine bill, the House Committee of the Whole took up the bill section by section, and over the next six days proposed and debated amendments on each section. Opponents of the bill, while not technically filibustering, made a significant effort to delay the passage of the bill. A number of pro forma amendments, usually to strike the last word of the section, were introduced which then allowed for a Representative to remark on the bill, essentially continuing the general debate. The *New York Times* characterized the opposition's tactics in an article on May 29, stating that Representative Nathaniel Hammond, a Georgia Democrat, "has declared his purpose to be hostile, and the one-third or more of the members who are opposed to the measure are unflagging in their speechmaking and well supplied with ridiculous amendments."<sup>1</sup>

There was considerable wrangling between Representative Hatch and Representative Breckinridge of Arkansas to speed up or slow down the bill. For example, on May 26, Hatch made a motion to limit debate on the first section, which defined butter, to five minutes. Breckinridge offered an amendment to the motion that it be extended to thirty minutes. Breckinridge's amendment was defeated 91 to 53. Breckinridge made the point that there was no quorum and Hatch and Breckinridge were appointed tellers and ordered to count the votes. In the meantime, they spoke and Hatch reported back that since Breckinridge wished to offer a substantive amendment to this section of the bill, he proposed they allow fifteen minutes of debate



for the bill. Breckinridge countered with a proposal of twenty, which Hatch accepted and the members agreed to.<sup>2</sup> The incident was indicative of how the bill progressed over the next several days. Hatch and the proponents of the bill consistently had the votes to keep the bill moving, but Breckinridge and some other opponents, particularly Representatives Hammond and Dunham, used a number of procedural tactics to slow the measure down. One of their most frequently used techniques was after every vote to declare that no quorum was present, which resulted in the time-consuming process of ordering tellers to count the votes on each side of the issue.

The most contentious and prolonged debates centered on Sections 3 and 8 of the bill, which set the rates of taxation. Section 3 of the bill outlined the taxes for manufacturers (\$600), wholesale dealers (\$480), and retail dealers (\$48). These taxes were the subject of a number of amendments which sought to reduce them.

Representative Dunham proposed an amendment to reduce the tax on manufacturers to \$100, which Representative Browne amended to set the value at \$200. Browne's amendment was rejected, and then Dunham's was also rejected by a vote of 119 to 44. Representative Warner then submitted an amendment to set the value at \$250, which was rejected 90 to 29. An amendment by Representative Browne to set the value at \$300 was then defeated by a vote of 105 to 51. Representative Dunham offered an amendment to set the value at \$350, which was defeated 125 to 26. Breckinridge then attempted to set the value at \$50, which was defeated 145 to 19. Representative Dunham submitted an amendment to set the value at \$475, which was defeated 124 to

14.<sup>3</sup> These votes were not very close, and the number of amendments offered on the taxes for wholesale dealers and retail dealers would subsequently be far fewer. They are an excellent example of how opponents attempted to slow down and revise the measure.

Section 8 of the bill proved to be as contentious as Section 3, but it was also the area where some compromise was reached which significantly altered the potential impact of the legislation. As proposed, it read:

SEC. 8. That upon oleomargarine which shall be manufactured and sold, or removed for consumption or use, there shall be assessed and collected a tax of 10 cents per pound, to be paid by the manufacturer thereof; and any fractional part of a pound in a package shall be taxed as a pound. The tax levied by this section shall be represented by coupon stamps; and the provisions of existing laws governing the engraving, issue, sale, accountability, effacement, and destruction of stamps relating to tobacco and snuff, as far as applicable, are hereby made to apply to stamps provided for by this section.<sup>4</sup>

This section was designed to severely penalize and potentially kill off the oleomargarine industry with a tax that would impact every manufacturer. The large manufacturers could deal with \$600 a year, but 10 cents a pound would be crippling. The smallest manufacturers would be crippled either way. This was not only the tax value proposed at the Dairymen's convention in New York City at the beginning of the year but was in fact the minimum proposed by the convention. Representative Townshend, a Democrat from southern Illinois, introduced an amendment to lower the tax to 2 cents per pound. Representative Bayne, a Pennsylvania Republican, summed up opposition to lowering the value immediately, stating, "If the tax be made so low that this stuff may be manufactured, and put in competition with butter on the market,

although all the safeguards that are provided for by this bill shall remain in it, it nevertheless will persist as a rival for honest butter in the market and sooner or later will drive honest butter out of the market.”<sup>5</sup>

On this section of the bill came the debate between those who favored regulation and some taxation and those who thought heavy taxation was necessary. While the proponents of the legislation favored a high tax, and opponents of the legislation wanted no bill at all, it was the middle area where compromise was finally found. Representative Lehlbach occupied the middle ground. He stated that while he was opposed to a 10 cent tax, he would accept a 2 cent tax. Lehlbach then voted against the House version, which ultimately set the tax at 5 cents, but for the amended version sent back from the Senate, which reduced the tax to 2 cents. After a series of amendments were proposed to change the rate to 5, 1, 3, or 4 cents, Representative Hatch offered an amendment to set the value at 8 cents, which passed 124 to 40.<sup>6</sup> Representative Hatch then proposed that when the bill was taken up by the full House, as opposed to the Committee of the Whole, that they revisit this issue with three yeas-and-nay votes on whether the rate should be 3, 5, or 8 cents, with the votes taken in that order.

In an attempt to mock what opponents believed to be an absurd piece of legislation, a number of amendments were proposed to various sections of the bill to add or substitute items such as oranges, incubators, and glass eggs to the list of items to

be regulated. The following amendment offered by Representative John Findlay, a Maryland Democrat, is typical:

Manufacturers of glass eggs shall pay \$1,000, and every person who manufactures or procures to be manufactured glass eggs shall be deemed a manufacturer of glass eggs. [Laughter.]  
Wholesale dealers in glass eggs shall pay \$1,500 a week. Every person who sells---  
THE CHAIRMAN (interrupting the reading). This amendment is not in order. [Laughter.]<sup>7</sup>

The Chair of the House Committee of the Whole, Representative William Springer, an Illinois Democrat, consistently ruled that these amendments were not germane to the bill or the section of the bill under discussion, but the opponents of the bill continued to offer them, prompting the Chair to finally reply “that he has indulged the gentlemen in their levity in regard to this bill and in the discussion; but now desires to enforce the rules of the House, which require that each amendment offered shall be germane to the subject-matter under consideration and that the committee shall proceed in order with the transaction of the public business. [Loud applause].”<sup>8</sup> While this reproach did not entirely end the business of offering this type of amendment, the frequency of their introduction did drop off significantly.

At the end of June 2, the amended bill was finally voted out of the House Committee of the Whole.<sup>9</sup> On June 3, there was only one major speech, which was by Representative Hatch. Following Hatch’s remarks, the House voted on amendments and the full bill and sent it to the Senate for consideration. Among these votes on amendments were, as promised by Hatch the day before, the votes on the per pound tax on manufacturers. The vote to set the tax at 3 cents a pound was narrowly defeated with 139 votes against and 131 votes for, with 52 not voting. The vote to set the tax at

five cents a pound was agreed to by a vote of 153 to 122, with 47 not voting, and so the rate was set at 5 cents per pound. As can be seen from the votes, there was significant support in the House for reducing the tax to a level that would promote a more fair level of competition but not so high that it would destroy the oleomargarine industry outright.

The final vote on H.R. 8328 in the House was 178 yeas, 101 nays, and 45 not voting.<sup>10</sup> At that point in time, the House had 182 Democratic members, 141 Republican, 1 National Greenback, and 1 Independent Democratic. Republican support for the bill was overwhelming (108 yeas, 14 nays, and 17 not voting), but the key to its passage was a split Democratic Party (69 yeas, 85 nays, and 28 not voting). While the Democratic members in the Senate were almost exclusively from the South, the Democratic party owed its majority in the House to the fact that it also include a large number of members from Northern states such as Pennsylvania and New Jersey, and in particular New York where 18 of 34 seats were held by the Democratic Party. The New York delegation voted 21 in favor and 8 against, with 5 not voting. In addition, significant support from the bill came from Democrats in Illinois, Indiana, Ohio, Mississippi, Kentucky, and Missouri.

There were 85 representatives from the eleven states that had formed the Confederate Union. Of these 85, there were 15 yeas, 60 nays, and 10 not voting. Representatives from this section of the country, which represented 26% of the population, voted 4 to 1 against the bill. Representatives from the rest of the country

voted 4 to 1 in favor of the bill. Furthermore, two-thirds of the southern representatives voting in favor of the bill came from Mississippi and Tennessee. If you take those two states out, the results for the other nine states were 5 yeas, 52 nays, and 10 not voting, which means the opposition was better than 10 to 1. Party was not a key indicator for this group, as there were only six Republicans whose votes were split three to three on the issue.

On June 7, the bill was introduced into the Senate and Warner Miller, a New York Republican, made a motion to refer it to the Committee on Agriculture and Forestry, which he chaired. There was considerable debate about this question, with a number of Senators arguing that the bill more properly belonged with the Committee on Finance as it was a revenue measure. Senator Miller argued that bills on this matter had always been sent to Agriculture and Forestry and in fact they had been studying this bill for six weeks. The argument was similar to the dispute in the House between Agriculture and Ways and Means, with the exception that in the Senate there were supporters of the measure who felt it did belong with Finance. Among these supporters were both of Vermont's Senators, Justin Morrill and George Edmunds, both Republicans, and Senators Nelson Aldrich, a Rhode Island Republican, Joseph Hawley, a Connecticut Republican, and Henry Payne, an Ohio Democrat. The motion to send the bill to the Committee on Agriculture narrowly passed, 22 to 21.<sup>11</sup>

The situation in the Senate was different from the House in a number of respects. Most importantly, Republicans held the majority, 39 Republicans to 35

Democrats, with 2 Readjusters from Virginia. Also, the split on this issue between committee members of Finance and those of Agriculture and Forestry was not as clear. The Finance committee members ultimately voted 4 for and 4 against final passage of the bill with two not voting, including Senator Morrill who was the chair and would have certainly supported the bill as a Senator from a state with strong dairy interests. The Senate Committee on Finance was not as staunchly opposed to the measure as the House Committee on Ways and Means and it is quite possible the bill would have made it through Finance. The Agriculture and Forestry committee members voted for the final passage of the bill 4 to 2 with 3 non-voting, and the committee, with Senator Miller as chair, did hold hearings and act on the measure.

The bill was reported out of the Agriculture and Forestry Committee with no changes from the House bill. The Senate debated the bill on July 17, 19, and 20. The debate used essentially the same arguments as those used in the House debate. Senator Miller shepherded the bill through the Senate. In the Senate, as opposed to the House, fewer members spoke but they spoke for a greater length of time. Senators Miller; Edmunds; Hawley; Thomas Palmer, a Michigan Republican; Charles Van Wyck, a Nebraska Republican; and William Evarts, a New York Republican, spoke in support of the bill. Senators Richard Coke, a Texas Democrat; Samuel Maxey, a Texas Democrat; James Beck, a Kentucky Democrat; Zebulon Vance, a North Carolina Democrat; George Gray, a Delaware Democrat; Isham Harris, a Tennessee Democrat; Matthew Butler, a South Carolina Democrat; George Vest, a Missouri Democrat; Joseph Brown, a Georgia

Democrat; Wilkinson Call, a Florida Democrat; and Harrison Riddleberger, a Virginia Readjuster, spoke against the measure.

Senator John Ingalls, a Kansas Republican and supporter of the bill, joined the opposition's efforts to bring attention to the practice of coloring butter using products such as "Wells, Richardson & Co.'s Perfected Butter Color," stating "I am opposed to bogus butter, whether it is made by a dairyman or an oleomargarine man." Senator Ingalls was one of the few Congressmen willing to poke some holes in the celebrated myth of the noble farmer, reading at length from Wells, Richardson & Co. product literature and taking great delight in the irony that the company was based in Burlington, Vermont.

This is somewhat protracted, but the advice to the dairymen of America is so important and they have been presented in the light of a long-suffering class of afflicted people engaged in their bucolic honesty in Vermont and elsewhere in a struggle with the herculean efforts of the manufacturers of oleomargarine to put a spurious article on the market, that I feel that perhaps the Senate will bear with me, and the Senator from South Carolina also, while I continue to give the country information as to the methods in which butter-color is prepared and the purposes for which it is employed.<sup>12</sup>

The *New York Times* gives a vivid accounting of Ingalls' remarks and their reception, providing a fuller picture of the emotional content of the subsequent exchange between Ingalls and Senator Miller of New York than can be gleaned from the *Congressional Record*. While "the laughter during this speech was hearty and frequent, and no one appeared to enjoy it more than Mr. Edmunds" of Vermont, the speech left Senator Miller "plainly mad." Miller responded, defending the coloring of butter and comparing Ingalls to "a peddler of quack medicines at a country fair." Ingalls, "with fire



flashes in his spectacled eyes,” shot back at Miller, taking the attack personally and stating that Miller’s strong interest in the bill was due to his financial interest in the dairy business. Miller responded, “his face white with indignation,” once more before Senator Butler, who had originally yielded the time to Ingalls and Miller, diffused the situation by concluding his remarks. Butler added one interesting argument to the debate, again taking on the appeals to defend farmers, as well as the tariffs that protect them, by stating “it is of a piece with the legislation of this Congress for twenty-five years, passing laws the effect of which is to put money into the pockets of the rich dairymen of New York and to deprive the millions of poor men in this country of buying in open market a cheap food for themselves and their families.”<sup>13</sup>

Ingalls, however, was the leading voice of compromise in the Senate on this measure and proposed an amendment on July 20 to reduce the tax on manufacturers from 5 to 2 cents per pound. The amendment passed by a vote of 33 to 28, with only 9 members who would vote for the passage of the final bill supporting it. The amendment passed with large support of those who opposed the bill, whose intent was to water down a piece of legislation that was sure to pass. The bill then passed the Senate on the same day by a vote of 37 to 24.<sup>14</sup>

The Senate vote was similar to the House vote in several ways. Republicans unanimously supported the bill, 31 to 0. They did not require much support from Democrats and they didn’t get much, as Democratic Senators voted against the bill 23 to 5. The two members of the Readjuster Party from Virginia split their votes, Harrison

Riddleberger voted nay and William Mahone voted yea. Senators from the eleven states that had formed the Confederate Union voted against the bill 18 to 1, an even stronger opposition than in the House. As in the House, Senators from the rest of the country showed strong support for the measure, voting for the bill 36 to 6.

Opposition from the South was directly related to a question about how much cotton-seed oil was used in the manufacture of oleomargarine and how this bill would impact the price of cotton. Senator Miller addressed this concern on July 17, stating that Armour & Company reported that they used little cotton-seed oil and that he even had a letter from a gentleman in the South “exposing this attempt to stir up the people of the South on this question, denouncing it in the strongest terms.”<sup>15</sup> While Miller was most likely correct that cotton-seed oil was not used in great quantities at this point in time in the production of oleomargarine, southern Representatives and Senators would not have wanted to see even a potential market dry up for a product from their largest crop.

The bill was then sent back to the House where, after a short debate, the House concurred with the Senate amendments by a vote of 175 to 75 on July 23.<sup>16</sup> President Cleveland signed the bill into law on August 2. His message to the House showed that he had some reservations about the need for the bill, but he deferred “to the judgment of the legislative branch of the Government, which has been so emphatically announced in both houses of Congress upon passage of this bill.” The bill had not passed with veto proof majorities. Cleveland and the Democratic Party had run on a platform to reduce

and reform taxation, so the issue was a sensitive one.<sup>17</sup> Cleveland took pains to defend the legislation and also noted that it provided an opportunity to relieve “our citizens from other revenue burdens.”<sup>18</sup>

The bill that was passed by Congress and signed by President Cleveland had changed in one important way from what was originally proposed, and that change ensured its passage. The change was, of course, the reduction of the per pound tax paid by manufacturers from 10 cents per pound to 2 cents per pound. While there was clearly support for the moral argument made by proponents that something should be done to protect dairy farmers from unfair, fraudulent, and potentially unwholesome competition with an adulterated food product, support for the means of protection was weaker. While the majority of congressmen felt something should be done, the final bill and the President’s message are evidence that there was hesitancy about this particular approach. Congress determined that the federal government did have a role to play in food regulation, and would continue to refine and expand that role over time, but this early tentative step is proof that political development does not happen in a linear fashion. Modeled on pre-existing internal revenue and tariff legislation, the bill would survive, and even grow more restrictive, until 1950, but it did not serve as a model for future food adulteration legislation. While Bannard rails that the bill is “protection gone mad” in 1887<sup>19</sup>, in fact the bill had been watered down quite dramatically and was not nearly as “mad” as it was originally intended, and did not serve as the legislative precedent in the way that many opponents had feared. The bill did have a direct impact

on the oleomargarine industry and future oleomargarine legislation, and it was an important component in the development of discourses over adulterated foods, taxation, and the role of the federal government, and these issues will be examined more closely in the next chapter.

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<sup>1</sup> "Quarreling in Caucus: Republican Senators Scolding Each Other. Mr. Blair Told Plainly That He Talks Too Much—The Northern Pacific Land Forfeiture Bill," *New York Times*, May 28, 1886.

<sup>2</sup> 17 C.R., 4970.

<sup>3</sup> 17 C.R., 4977-4982, 5005-5007.

<sup>4</sup> 17 C.R., 5055.

<sup>5</sup> 17 C.R., 5055.

<sup>6</sup> Section 8 was considered at the end of May 28, all day May 29, and at the start of the day on June 1. 17 C.R., 5055-5056, 5074-5092, 5117-5121.

<sup>7</sup> 17 C.R., 5010.

<sup>8</sup> 17 C.R., 5011.

<sup>9</sup> 17 C.R., 5179.

<sup>10</sup> Roll call votes on amendments and the bill as it passed in the House can be found in 17 C.R., 5208-5213.

<sup>11</sup> 17 C.R., 5339-5344.

<sup>12</sup> 17 C.R., 7149.

<sup>13</sup> "A Comedy in the Senate: The Leading Parts by Messrs. Miller and Ingalls. The Debate on the Oleomargarine Bill Results in Some Strong Personalities by Both Senators," *New York Times* July 20, 1886; 17 C.R., 7149-7152.

<sup>14</sup> 17 C.R., 7196-7202.

<sup>15</sup> 17 C.R., 7082.

<sup>16</sup> 17 C.R., 7402.

<sup>17</sup> Congressional Quarterly, *National Party Conventions* (Washington, D.C: Congressional Quarterly, 1976), 67.

<sup>18</sup> Grover Cleveland, "Special Message, August 2, 1886" in John T. Woolley and Gerhard Peters, *The American Presidency Project* [online]. Santa Barbara, CA: University of California (hosted), Gerhard Peters (database). Available from World Wide Web: <http://www.presidency.ucsb.edu/ws/?pid=71284>.

<sup>19</sup> Henry C. Bannard, "The Oleomargarine Law: A Study of Congressional Politics." *Political Science Quarterly* 2, no. 4 (December 1887): 545.

## CHAPTER 6: IMPACT OF THE LEGISLATION

The Annual Report of the Commissioner of Internal Revenue for the year ending June 30, 1887 gave the first indication of the initial impact of the 1886 Oleomargarine Act. The report stated that “the receipts under this act during these eight months aggregated \$723,948.04, of which \$435,924.04 is the tax on 21,796,202 pounds of oleomargarine at 2 cents per pound; \$31,700 are the special taxes paid by manufacturers; \$101,400 the special taxes paid by wholesale dealers, and \$154, 924 the special taxes paid by retail dealers in oleomargarine.” Adding the \$226,100.66 received from July, 1887 to October 1887, the tax had generated nearly a million dollars in its first year of existence.<sup>1</sup>

The report gave the first view of not only how much revenue was being generated from the tax but also how much oleomargarine was being produced and sold and where. Manufacturers in nine states produced 21,513,537 pounds of oleomargarine between November 1, 1886 and June 30, 1887. The first congressional district of Illinois had the greatest number of persons paying special taxes as manufacturers and wholesale dealers and the second greatest number of persons paying the retail dealer tax. It should come as no surprise that this was the Chicago district represented by Representative Dunham who had been such a leading opponent of the measure. The largest number of retail dealers paying the tax was in Boston, Massachusetts, in a district represented by Ambrose Ranney, who had not voted on the bill. Another area showing considerable activity was Rhode Island, which had the third

greatest number of dealers paying special taxes and the second greatest number of manufacturers.<sup>2</sup>

A section of the report attested to the wholesomeness of oleomargarine, stating that “the manufacturers of oleomargarine, upon whose products the internal-revenue stamps and brands appear, are earnestly endeavoring to render their products not deleterious to the public health.”<sup>3</sup> The legislation that regulated and taxed, and thus acknowledged and scrutinized, the manufacturers of oleomargarine actually presented manufacturers with an opportunity to document the cleanliness of their manufacturing processes.

On the matter of fraud, the office of the Commissioner of Internal Revenue had examined 131 samples suspected to be oleomargarine posing as butter and found that twenty-two were adulterations and the rest were butter, although usually in a rancid condition which may have been the cause for suspicion. The greatest number of samples analyzed was from Missouri, where seventy-five of the samples had originated. Twelve of these were found to be oleomargarine.<sup>4</sup>

The first few years of the new regulation show a distinct pattern of consolidation of the oleomargarine industry. In the last eight months of fiscal year 1887, thirty states had some level of production. By 1888, the number of states had dropped to ten, indicating that the tax had quickly contributed to the consolidation of the industry as smaller manufacturing areas, and presumably smaller manufacturers, found the taxes too prohibitive. Illinois, the center of the industry, accounted for two-thirds of the total

growth in pounds produced between 1889 and 1894. The case of Illinois therefore is another sign that the tax had served as an incentive for consolidation.<sup>5</sup>

Questions about fraudulent practices by no means ended with the 1886 legislation, and of particular concern were retailers. The Commissioner of Internal Revenue suggested lowering the tax amounts as a way of taking away the incentive to deceive, but dairy interests felt the problem lay primarily with the issue of color and began to agitate for further legislation at the state and federal level. They were strengthened in their convictions by the United State Supreme Court decision in 1888, in the case of *Powell v. Pennsylvania*, which upheld Pennsylvania's prohibitory law. A separate Supreme Court case, *Leisy v. Hardin*, mitigated the effect of this decision by ruling that Iowa did not have the power to stop the shipment of beer into its state. Interstate commerce, the Court ruled, was for Congress to decide.

Between 1886 and 1902, thirty-two states passed anti-color laws, prohibiting the sale of oleomargarine colored to look like butter. In the 1894 case of *Plumley v. Massachusetts*, the Supreme Court ruled on whether colored oleomargarine could be brought across state lines and sold in a state where there was a ban. The Court, in a decision seemingly at odds with *Leisy v. Hardin*, ruled that colored oleomargarine could not be brought into a state where there was a ban because it might deceive consumers. The distinction was that the Massachusetts legislation was not a prohibitory measure banning all oleomargarine, but a protection against fraud because it set limits on which oleomargarine could be sold. *Schollenberger v. Pennsylvania* in 1898, however, did

agree with the *Leisy v. Hardin* precedent, ruling against Pennsylvania because, unlike Massachusetts, its law prohibited all oleomargarine.<sup>6</sup>

In Congress, attempts were made to amend the 1886 Act in response to these developments. Between 1887 and 1901, thirty-four bills were introduced dealing with oleomargarine. Particularly resolute in attempting to refine and toughen the legislation was Representative William W. Grout, a Vermont Republican who had played a leading role in the 1886 debates. William Wallace Grout, a Quebec-born Civil War veteran from Kirby, Vermont, served in the House from 1881-1883 and 1885-1901. Grout introduced a number of bills in the 1890s to address these issues, twice getting measures passed in the House only to have them die in the Senate. In 1900, Grout's H.R. 3717 was partially debated on the Senate floor, but a vote was never taken.

Grout's bills had two aims. First, the bills were designed to address the interstate commerce decisions of *Schollenberger v. Pennsylvania* and *Leisy v. Hardin* by making oleomargarine produced in one state subject to the laws of whatever state it passed into. So, if colored oleomargarine was legal in Illinois but illegal in Vermont, these bills proposed that colored oleomargarine produced in Illinois could not be sold in Vermont. Second, Grout focused on the color issue as the best method for preventing the fraudulent sale of oleomargarine as butter and proposed to change the tax provision to make artificially colored oleomargarine pay a higher rate. Grout, in his remarks on the House floor on December 7, 1900, stated that "the enormous profits arising from the



fraudulent sale of oleomargarine for butter present an overpowering temptation to the manufacturer and retailer to sell it for butter at the price of butter.”<sup>7</sup>

Grout did not run for reelection in 1900, choosing instead to run in the special election to fill the unexpired term of Justin Morrill, an election that was still held in the joint assembly of the Vermont legislature rather than by popular vote.<sup>8</sup> Grout lost the election to William Dillingham. In Grout’s absence, the cause of oleomargarine legislation was taken up by others in the House. Eight bills were introduced in the House in 1902. The most important was H.R. 9206, which would become known as the Grout bill, introduced by Representative Edward Henry of Connecticut on January 15.

Henry’s bill, like seven of the eight measures introduced in the House, was referred to the Committee on Agriculture and was reported back to the House on January 29. The House debated the bill on February 3-5, and February 10-12, the length of the debate demonstrating the continued interest and contentiousness of this matter. The House passed the bill on February 12, and the next day it was referred to the Senate Committee on Agriculture and Forestry, which was chaired by another Vermonter, Senator Redfield Proctor. Proctor’s committee reported the bill back, with amendments, on February 24. Debate in the Senate occurred from March 24-27, and March 31-April 3. A motion to recommit the bill barely failed on April 3, by a vote of 37 nays to 35 yeas with 16 Senators not voting. The final vote in the Senate then took place and the bill passed by a vote of 39 to 31 with 18 Senators not voting. The amendment to the 1886 act became law on May 9, 1902.

The 1902 amendment made a few substantial changes to the 1886 Act. The tax on manufacturers of artificially colored oleomargarine was raised to 10 cents per pound, but the tax for uncolored oleomargarine was reduced to  $\frac{1}{4}$  of cent per pound. The tax on wholesale dealers was reduced from \$480 to \$200 and the tax on retail dealers was reduced from \$48 to \$6, but only where these dealers were not selling artificially colored oleomargarine. These aspects of the bill were designed to reduce fraud by making it prohibitively expensive to manufacture and sell oleomargarine that was artificially colored to look like butter, and by reducing the taxes on wholesale and retail dealers to a level that would not serve as an incentive for evasion. The bill also defined “adulterated butter” and “process” or “renovated” butter and set taxes for these products, and it required oleomargarine to be sold in one or two pound packages only.<sup>9</sup>

The impact, according to Internal Revenue statistics, was pronounced and immediate. The amount of revenue collected dropped significantly following the 1902 bill, from \$2,463,615 in 1902, to \$446,558 in 1903, and then to \$280,045 in 1904, before beginning a slow rebound. There were a few factors that impacted the drop in revenue. The per-pound tax on uncolored oleomargarine had dropped by a factor of eight, the taxes for wholesale and retail dealers for uncolored had been lowered, and the tax on colored oleomargarine had been made prohibitively high. Because of these new tax rates, it is the production levels of oleomargarine that demonstrate the real impact of the legislation. The pounds of oleomargarine produced, a figure which includes imports,

was 123,133,853 in 1902, 71,237,438 in 1903, and reached its low point at 48,071,850 in 1904.<sup>10</sup>

One way that the oleomargarine manufacturers addressed the new tax was to begin to find new ways to naturally color oleomargarine, so other oils were introduced into the process that naturally colored the product yellow. There was considerable debate over the quantity of oil included and whether it could be considered an essential ingredient and was not just a coloring additive. Coloring packets also were sold with oleomargarine, so that the consumer could color the oleomargarine themselves. In addition, there was considerable evasion of the law particularly at the level of the retail dealer, where uncolored oleomargarine was mixed in with colored oleomargarine and both were frequently passed off as butter. The Commissioner of Internal Revenue's reports are filled with accounts of this fraudulent activity and suggested changes to the legislation that included changing the way oleomargarine was packaged by the manufacturer and eliminating the two-tiered tax on manufacturers.<sup>11</sup>

The combination of state laws and the 1902 federal law made colored oleomargarine either totally unavailable or priced almost as much as butter. The impact initially was a large reduction in oleomargarine production, but it had recovered by 1910.<sup>12</sup> In 1906, two important federal acts were passed that had an impact on food safety and the oleomargarine industry, the Meat Inspection Act and the Pure Food and Drug Act. The Meat Inspection Act applied to oleomargarine because it was still primarily a meat-based product. The act supervised the manufacture and branding of

oleomargarine when it was made from meat. The Pure Food and Drug Act allowed for the supervision of all aspects of the production and distribution of oleomargarine but was initially only concerned with preventing fraud when the product was shipped between states or out of the country.<sup>13</sup>

In 1915, the production of oleomargarine was changed by the introduction of the process of hydrogenation. This allowed manufacturers to replace naturally-solid fats such as animal fats with vegetable oils like coconut, palm, and cottonseed oil. Hydrogenation revolutionized the industry, although it too became a source of controversy when it was later discovered that this process produces unhealthy trans-fats. Oleomargarine production and consumption grew steadily from 1910 to 1920, benefitting from high butter prices and a shortage of other fats, and there were efforts in Congress to repeal the tax but they were unsuccessful. Coconut oil became the primary ingredient as access to other fats became limited during the war. The decade after the war saw a slight overall decrease in production and consumption. In 1920, the National Association of Margarine Manufacturers formed, and began a public relations effort to improve the reputation of the product.<sup>14</sup>

Working against acceptance of margarine were the dairy organizations and their political allies, who used the foreign production of coconut oil to their advantage. In response to naturally colored hydrogenated oils used in oleomargarine and products that were sold under the name of cooking compounds so as to avoid the tax, the federal government passed a law in 1930 that extended the 10 cents tax to naturally colored

oleomargarine, expanding the original definition of oleomargarine in Section 2 of the 1886 bill. Consumption soon plummeted. The 1930's saw increasingly strict restrictions or prohibitions at the state level and restrictions were placed on the use of margarine by the Army and Navy as well.<sup>15</sup>

World War II brought an increase in margarine consumption and increased use of domestically-grown cottonseed and soybean oils, thus eliminating the argument against the foreignness of the product and gaining some powerful agricultural allies to combat the dairy lobby. Butter had gained an advantage in the 1920's when it was discovered that it had higher vitamin content than margarine, but this advantage was diminished when manufacturers discovered methods of fortifying margarine with vitamins in the 1930s. A ration system in World War II encouraged the use of margarine, the price remained low, and consequently consumption rose.

After World War II, color restrictions were lifted in a number of states and there was increasing agitation for change at the federal level. When butter prices skyrocketed in 1948, opposition to the bill reached new levels. The House passed a bill in 1948, proposed by Mendel Rivers, a South Carolina Democrat, but the bill died in the Senate. In 1949, a bill to repeal the 1886 Oleomargarine Act, proposed by W.R. Poage, a Texas Democrat, passed in the House. The Senate passed an amended version in early 1950.<sup>16</sup>

The result of the 1950 act was that colored margarine became the norm and consumption almost doubled between 1950 and 1960. The price stayed about the same, decreasing 4 cents a pound between 1950 and 1969. Margarine production

slowly began to overtake butter production, finally surpassing it in 1958. Soybean oil supplanted cottonseed oil as the principal ingredient of margarine, a direct action of another government policy which set price support levels for cottonseed oil. State laws slowly were repealed and in 1967 the last ban on colored margarine was repealed in Wisconsin.<sup>17</sup>

The 1886 Oleomargarine Act is one event in an almost 100 year history of state and federal legislation to regulate oleomargarine and protect butter in the United States. Judicial decisions to overturn or uphold these acts, and strong consumer and industry reactions, would feed back into an ongoing loop which continued to produce new legislative attempts to address the situation. State acts prior to 1886 were found to be insufficient and so a remedy was sought at the federal level. The 1886 Act, which originally included a prohibitive rate of taxation for all oleomargarine, was significantly watered down in Congress. The result was not destruction but consolidation of the industry. Continued concerns about fraud led to even stronger state legislation, interstate commerce protection, and a high tax on colored oleomargarine.

The dairy interests may have been happier with the results of the 1902 legislation, thinking it might just be the crushing blow needed to obliterate their competition, but the oleomargarine industry would prove to be incredibly resilient. In shifting ingredients away from beef and pig-based fat to coconut oil, the oleomargarine industry began to make a naturally yellow product. Likewise, a number of yellow cooking compounds came on the market, leading Congress to pass legislation in 1930

that expanded the definition of oleomargarine and placed the same high tax on the naturally colored versions of the product. A shift to cottonseed and soybean oil as main ingredients found the margarine industry more powerful allies, and increased use during World War II coupled with high butter prices in 1947 finally led to a repeal in 1950.

The 1886 Act set many of these events in motion. The use of taxation to address the problem was altered and not abandoned in subsequent attempts. Despite increasing legislative protections against fraud and to ensure safety, the Bureau of Internal Revenue continued to play a key regulatory role. The means of taxation grew out of a reading of the Constitution that an outright ban or regulation of interstate commerce was not possible. Oleomargarine was seen as taxable because of its low cultural status. The other products that were taxed at the time were alcohol and tobacco, soon to be joined by playing cards in 1895. These were moral taxes, or sumptuary laws, designed to regulate what people consume. The result of the 1886 Act was, in effect, the sanctioning of the stigmatization of oleomargarine by the United States Government.

In addition to the important role that the 1886 Act played in the history of oleomargarine legislation, it is also critical to note how the act was influenced by the political circumstances that surrounded it at the time it was debated. The act represented a continuation of the internal revenue system, an expansion of the supervisory responsibility of the federal government, an attempt to tackle one component of the adulterated food problem, and a small step into regulating interstate

commerce. The federal government's role in all of these areas and their corresponding bureaucratic agencies would continue to expand.

In 1886, these matters were unsettled. In particular, the Democratic Party was going through a transition phase on the idea of an expanded federal government. In these debates, it was largely the southern Democrats who held fast to arguments of states' rights, small government, and a reduction of taxes. Democrats from the rest of the country had a more mixed response. As Dupré demonstrates, this was likely due to the economic interests of members' constituents. The southern Democrats may have used the traditional arguments of their party, but they were also certainly opposing the legislation out of a desire to protect the economic interests of their cotton growing constituents.

All of these issues are clearly and extensively articulated in the 1886 Congressional debates, particularly the strong language used to describe butter and oleomargarine. The symbolic language used did not originate in these debates, but this major national discussion helped give permanence to these meanings. Butter and oleomargarine have been linked ever since and many of the strong representative qualities ascribed to the two substances, as well as the important relationship of one to the other, can still be found in contemporary discussions. For example, Varda Langholz Leymore, in a 1975 study of structure and symbolism in advertising, discusses the oppositional language used in both butter and margarine marketing as an example of how oppositional products are used to define each other. In butter advertisements,



butter is to margarine as dear is to cheap, concord is to protest, content is to discontent, care is to negligence, love is to hate, and ultimately peace is to war. Interestingly, Leymore found that “while butter advertisements emphasize uniqueness and exclusivity, margarine advertisements put the accent on closeness, similarity and association with butter.”<sup>18</sup> These ascribed meanings were already evident in the 1886 debates, and were reinforced by the passage of increasingly restrictive federal and state acts. The fact that this was a debate about socially constructed definitions, and not just about a piece of legislation, explains why the debate lasted as long as it did, why it generated so much attention, and why the members of Congress expressed so much passion about the bill.

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<sup>1</sup> U.S. Department of the Treasury, Office of the Commissioner of Internal Revenue, “Report of the Commissioner of Internal Revenue for the fiscal year ended June 30, 1887” (Washington, 1887), CXXVI-CCXXVII, CXXX.

<sup>2</sup> U.S. Department of the Treasury, CXXVII-CXXIX.

<sup>3</sup> U.S. Department of the Treasury, CXL.

<sup>4</sup> U.S. Department of the Treasury, CXLII-CXLIV.

<sup>5</sup> United States Bureau of the Census, *Statistical Abstract of the United States*. (Washington, D.C: U.S. Dept. of Commerce, 1894), 297.

<sup>6</sup> Katharine Snodgrass, *Margarine as a Butter Substitute* (Stanford University, CA: Food Research Institute, 1930), 43-53.

<sup>7</sup> William Wallace Grout, *Oleomargarine* (Washington: G.P.O, 1900), 3.

<sup>8</sup> Josiah Grout, *Memoir of Gen'l William Wallace Grout and Autobiography of Josiah Grout* (Newport, Vermont: The Bullock Press, 1919), 152-153.

<sup>9</sup> Riepma, Siert F., *The Story of Margarine* (Washington: Public Affairs Press, 1970) 116.

<sup>10</sup> United States Bureau of the Census, *Statistical Abstract of the United States*. (Washington, D.C: U.S. Dept. of Commerce, 1908), 198.

<sup>11</sup> Snodgrass, 62-67.

<sup>12</sup> Riepma, 119.

<sup>13</sup> Snodgrass, 61.

<sup>14</sup> Riepma, 120-121.

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<sup>15</sup> Riepma, 122-123; Snodgrass, 77-88.

<sup>16</sup> Riepma, 124-126.

<sup>17</sup> Riepma, 127-128.

<sup>18</sup> Varda Langholz Leymore, *Hidden Myth: Structure & Symbolism in Advertising* (New York: Basic Books, 1975), 41-47.

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